Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 13 MAY 16, 1979 No. 20

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79–127)

Reimbursable Services—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning May 6, 1979.

Installation:	*Biweekly excess cost*
Montreal, Canada	$13,207
Toronto, Canada	24,094
Kindley Field, Bermuda	5,170
Freeport, Bahama Islands	10,032
Nassau, Bahama Islands	14,768
Vancouver, Canada	8,051
Calgary, Canada	5,367
Winnipeg, Canada	1,870

JACK T. LACY,
Assistant Commissioner of Customs, Administration.

[Published in the Federal Register May 1, 1979 (44 FR 25554)]

(T.D. 79–128)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback rates and amendments issued April 25, 1978, to April 4, 1979, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(d), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the

factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)
Dated: April 25, 1979.

DONALD W. LEWIS
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(A) Company: Grapette International, Inc.
Articles: Flavoring extracts.
Merchandise: Domestic tax-paid ethyl alcohol.
Factory: Hot Springs, Ark.
Statement signed: July 10, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, September 28, 1978.

(B) Company: Universal Flavors of California, Inc.
Articles: Apple flavoring extracts.
Merchandise: Domestic tax-paid alcohol.
Factory: Irvine, Calif.
Statement signed: December 11, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, April 4, 1979.

(C) Company: Universal flavors of Indiana, Inc.
Articles: Apple flavoring extracts.
Merchandise: Domestic tax-paid alcohol.
Factory: Indianapolis, Ind.
Statement signed: February 24, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, April 25, 1978.

(T.D. 79-129)

Synopses of Drawback Decisions

The following are synopses of drawback rates and amendments issued December 15, 1978, to March 15, 1979, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was issued.

(DRA-1-09)

Dated: April 30, 1979.

DONALD W. LEWIS
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(A) Company: Berger & Plate Co., divison of Pacific Molasses Co.
Articles: Split and whole peas.
Merchandise: Imported raw peas.
Factory: Garfield, Wash.
Statement signed: June 16, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 5, 1979.

(B) Company: Cargill, Inc.
Articles: Alkali refined coconut oil (cochin), refined bleached and deodorized coconut oil, acidulated coconut oil soapstock.
Merchandise: Imported crude coconut oil.
Factory: San Francisco, Calif.
Statement signed: January 8, 1979.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: San Francisco, January 22, 1979.
Amends: T.D. 52173-G, to cover additional process above.

(C) Company: Chesapeake Cutters, Inc.
Articles: Cut panels and parts for sails.
Merchandise: Imported dacron sailcloth greige goods.
Factory: Annapolis, Md.
Statement signed: January 23, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, March 2, 1979.

(D) Company: Crown Plastics Co.
Articles: Plastic sheets.

Merchandise: Imported Hostalen GRLP 7255P plastic powder.
Factories: Harrison, Ohio; Lawrenceburg, Ind.
Statement signed: February 28, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, March 14, 1979.

(E) Company: Crown Spinning Mills, Inc.
Articles: Ramie yarn.
Merchandise: Imported ramie top.
Factory: Central Falls, R.I.
Statement signed: January 11, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, January 26, 1979.

(F) Company: DMH Co., a division of National Gypsum Co.
Articles: Mobile homes.
Merchandise: Imported interior Lauan paneling.
Factories: Red Lake Falls, Minn; Hutchinson and Newton, Kans; Clarion, Pa; Redlands, Calif.
Statement signed: May 8, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, February 14, 1979.

(G) Company: Electronic Arrays, Inc.
Articles: Finished semiconductor devices, fully and partially fabricated semiconductor wafers.
Merchandise: Imported unfinished semiconductor subassemblies, 3″ P1–0–0 and 3″ N1–1–1 silicon wafers.
Factory: Mountain View, Calif.
Statement signed: December 18, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, January 18, 1979.

(H) Company: Emerson Radio Corp.
Articles: Phonographs.
Merchandise: Imported amplifiers, speakers, record changers, radio chassis, and speaker cords.
Factory: Secaucus, N.J.
Statement signed: April 3, 1978.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: San Francisco, January 12, 1979.

Amends: T.D. 73–51–K, to cover (1) change in factory location from Brooklyn, N.Y.; and (2) change in name from Major Electronics Corp.

(I) Company: Facemate Corp.
Articles: Woven cotton interlinings.
Merchandise: Imported woven cotton greige cloth.
Factory: Chicopee, Mass.
Statement signed: February 7, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, February 16, 1979.
Revokes: T.D. 78–159–J, superseded.

(J) Company: Grissol Foods Ltd.
Articles: Dry bread products.
Merchandise: Imported bread flour and malt sirup.
Factory: Swanton, Vt.
Statement signed: February 8, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, February 22, 1979.

(K) Company: Grove Manufacturing Co.
Articles: Hydraulic cranes (truck mounted, rough terrain, and industrial type).
Merchandise: Imported gearmatic winches and Deutz engines.
Factories: Shady Grove, Pa.; Conway, S.C.
Statement signed: November 9, 1978.
Basis of claim: Used in.
Amendment issued by Regional Commissioner of Customs: Baltimore, December 15, 1978.
Amends: T.D. 78–379–J, to cover additional imported merchandise (Deutz engines).

(L) Company: Gulfstream American Corp.
Articles: Executive aircraft, aircraft engines.
Merchandise: Imported aircraft engines, accessories, among other things.
Factory: Savannah, Ga.
Statement signed: November 29, 1978.
Basis of claim: Appearing in.
Amendment issued by Regional Commissioner of Customs: Miami, January 10, 1979.
Amends: T.D. 73–226–A, as amended, to cover a change in name from Grumman American Aviation Corp.

(M) Company: ILI Corp.
Articles: Engine generator sets.
Merchandise: Imported diesel engines and generators.
Factory: Bellevue, Wash.
Statement signed: January 24, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 14, 1979.

(N) Company: K2 Corp.
Articles: Snow skis.
Merchandise: Imported P-tex (plastic sheeting) and roll-formed steel.
Factory: Vashon Island, Wash.
Statement signed: October 25, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 5, 1979.

(O) Company: Kliklok Corp.
Articles: Cardboard carton-forming and closing machines.
Merchandise: Imported packaging machinery parts.
Factory: Redwood City, Calif.
Statement signed: July 13, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, March 15, 1979.

(P) Company: The Lincoln Electric Co.
Articles: Welders.
Merchandise: Imported diesel engines.
Factory: Cleveland, Ohio.
Statement signed: December 13, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, January 8, 1979.

(Q) Company: Morris Pumps, Inc.
Articles: Flow pumps.
Merchandise: Imported castings, wrought steel materials, bearings, and fabrications.
Factory: Baldwinsville, N.Y.
Statement signed: February 21, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, March 7, 1979.

(R) Company: Power Curvers, Inc.
Articles: Curbing machines.
Merchandise: Imported and/or drawback Deutz diesel engines.
Factory: Salisbury, N.C.
Statement signed: November 30, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, January 9, 1979.

(S) Company: Qualfab, Inc.
Articles: Positioner motor assemblies.
Merchandise: Imported magnets.
Factory: Redwood City, Calif.
Statement signed: December 18, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 14, 1979.

(T) Company: Refiners Marketing Co.
Articles: Finished marine lubricating oils.
Merchandise: Imported marine lubricating oil concentrates.
Factory: Terminal Island, Calif.
Statement signed: February 15, 1979
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, February 22, 1979.

(U) Company: Servo Co., division of Smith International, Inc.
Articles: Drill collars.
Merchandise: Imported A.M. 20 austenitic stainless steel bars.
Factories: Bakersfield and Gardena, Calif.; Lafayette, La.; Houston, Tex.
Statement signed: November 16, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, January 24, 1979.

(V) Company: Sony Magnetic Products, Inc. of America.
Articles: Video/audio magnetic cassette tapes (blank).
Merchandise: Imported and/or drawback base film, chemicals, and plastic cassette parts.
Factory: Dothan, Ala.
Statement signed: November 28, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New Orleans, January 8, 1979.

(W) Company: Spartus Corp.
Articles: Kitchen and decorator clocks.
Merchandise: Imported and/or drawback clock battery movements.
Factory: Louisville, Miss.
Statement signed: February 28, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New Orleans, March 5, 1979.

(X) Company: Telex Communications, Inc.
Articles: Cassette book machines and tape decks.
Merchandise: Various imported electrical and electronic parts.
Factory: Rochester, Minn.
Statement signed: Novembr 30, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, January 26, 1979.

(Y) Company: Vibrox/MCA Inc.
Articles: Fishing lures.
Merchandise: Imported components—fishing lures.
Factory: Watertown, Mass.
Statement signed: December 26, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, January 8, 1979.

(Z) Company: Wilco-U.S., Inc.
Articles: Steel tubing.
Merchandise: Imported steel strip.
Factory: Port Sanilac, Mich.
Statement signed: February 6, 1979.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: Chicago, February 23, 1979.

(T.D. 79–130)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
April 16, 1979	$0.631313
April 17, 1979	.628812
April 18, 1979	.626331
April 19–20, 1979	.628220
Hong Kong dollar:	
April 16, 1979	$0.192771
April 17, 1979	.190658
April 18, 1979	.196657
April 19, 1979	.193892
April 20, 1979	.193761
Iran rial:	
April 16–19, 1979	$0.013875
April 20, 1979	.013350
Philippines peso:	
April 16–20, 1979	$0.1365
Singapore dollar:	
April 16, 1979	$0.453618
April 17, 1979	.453309
April 18, 1979	.454133
April 19, 1979	.454442
April 20, 1979	.453618
Thailand baht (tical):	
April 16–19, 1979	$0.0505
April 20, 1979	.0488

(LIQ-3-O:D:E)

Date May 1, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 79-131)

Bonds

Discontinuance of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

The following consolidated aircraft bond has been discontinued as shown below.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
Aerovias Nacionales de Colombia S.A. (Avianca) 16 East 48th St., New York, NY; Aetna Ins. Co. D 5/24/77	July 1, 1974	June 14, 1974	J.F.K. Airport; $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

Dated: April 30, 1979.

BON-3-01

DONALD W. LEWIS,
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(T.D. 79-132)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds) Customs Form 7605

The following consolidated aircraft bond has been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
Iran National Airlines Corp. (IRAN AIR) 345 Park Ave. New York NY; National Union Fire Insurance Co. of Pittsburgh, PA (PB 4/17/75) D 4/16/79 [1]	Apr. 17, 1979	Apr. 23, 1979	J.F.K. Airport; $100,000

[1] Surety is American Home Assurance Co.

The foregoing principal has not been designated as a carrier of bonded merchandise.

Dated: May 1, 1979.

BON-3-01

DONALD W. LEWIS
(For Leonard Lehman, Assistant Commissioner, Regulations and Rulings).

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79–168)

Classification: "Vita-Flo" Dietary Supplement

Date: April 27, 1978
File: CLA–2:R:CV:MC
059362 JH

This is in reference to your letter of April 3, 1978, concerning the dutiable status of a dietary supplement known as "Vita-Flo" from Holland.

You note that entries were classified as edible preparations in item 182.98, TSUS, with duty rate of 10 percent ad valorem but that you believe that the product should be classified under the provision for natural vitamins not artificially mixed in item 437.84, TSUS.

A sample packet was submitted. The product is said to contain safflower seed, soy lecithin, dried yeast, brown sugar, calcium diphosphate, magnesium oxide, wheat germ, ascorbic acid, D-alpha tocopherol acetate, and pyridoxine hydrochloride.

A product of such composition cannot be considered natural vitamins, since it is composed of ingredients other than vitamins.

The provision for edible preparations includes food ingredients and food additives as well as prepared foods. Since "Vita-Flo" consists essentially of recognized food ingredients, it is correctly classifiable as an edible preparation in item 182.98, TSUS. The rate of duty is 10 percent ad valorem.

(C.S.D. 79–169)

Classification: Printed Color Cards Used as a Guide for Printing Inks

Date: June 15, 1978
File: CLA–2:R:CV:MC
059307 L

In your letter of March 22, 1978, you asked for information about the tariff status of a set of printed color cards, or guide, for printing inks from Canada. A sample was submitted.

The sample is composed of 24 cards, each 3¼ by 7 inches, held together by a swivel screw at the left top corner. These cards are basically a grey color, and are printed with two 2-inch bands of colored ink. These bands are identified by numbers.

Merchandise represented by the submitted sample is classifiable as a chart under item 273.35, Tariff Schedules of the United States (TSUS), and can be entered free of Customs duty.

(C.S.D. 79–170)

Classification: Children's Cold Weather Garments; Coated or Filled With Rubber or Plastics

Date: June 15, 1978
File: CLA–2:R:CV:MC
059435 PR

This is in reply to your letter of May 1, 1978, on behalf of (name) concerning the tariff status of certain children's cold weather garments. We assume that the garments are a product of Canada.

Four samples were submitted: two children's jackets and two children's bib-type pants. You believe that all four garments should be classified under the provision for garments designed for rainwear, hunting, fishing, or similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastic, other, in item 376.56, Tariff Schedules of the United States (TSUS). We assume all the garments are waterproof.

Of the four samples submitted, two are stated to be made with outer shells of a woven nylon fabric that has been coated or filled with a plastics material which you indicate to be polyurethane. This material

is referred to as "insulon." On only one of these two garments, the bib-type snow pants, is the coating which is on the inner surface of the outer shell, visible. The other two garments have woven nylon outer shells that you indicate have been coated on the inner surface with a silicon material. That material is visible neither to the naked eye nor under low magnification.

In order to be classifiable in items 376.56, TSUS, the garments must not only be designed for certain uses, but must also be "wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics." Headnote 2(a), part 4C, schedule 3, TSUS, which defines the term "coated or filled" for tariff purposes, requires that the coating or filling must visibly and significantly affect the surface or surfaces thereof otherwise than by a change in color, whether or not the color has been changed. The Customs Service has interpreted this to mean that the coating or filling must be visible to the naked eye. On this basis, the two garments with the silicon application and one of the insulon treated garments do not qualify for classification in item 376.56, TSUS.

One garment made with silicon treated fabric is a cold weather short length jacket which has a full-front zippered opening, two inserted pockets with zipper closures, a knit stand-up collar, and an overlaid fabric stripe running the length of each sleeve. The front panels of the garment are made from orange, blue, and white fabrics that have been pieced together. The sleeves and rear panel of the garment are made of the same orange fabric. The other garment made with the same silicon treated outer shell fabric is a pair of bib snow pants with a zipper front closure, suspender straps, and overlaid fabric stripes which extend down the outside leg seam of the garment.

The size six girl's hooded short length jacket is labeled to be made of insulon material. It has an imitation fur extension around the hood of the jacket, a full front zippered opening, two zippered seam pockets, and an overlaid fabric stripe which encircles the arm area on each sleeve. The garment is constructed of pieces of two different colored orange fabrics which are pieced together. Although the swatch of insulon material which you submitted separately with your letter is considered coated or filled for tariff purposes, the two fabrics comprising this garment do not have the same amount of coasting on their interior surface. In fact, while we can ascertain that a material has been applied to the fabrics by examining those fabrics under low magnification, we cannot see the material with our naked eyes. Accordingly, the fabrics comprising this garment are not coated or filled for tariff purposes. The overlaid stripes on each of these garments

cause them to be ornamented for tariff purposes. The three garments described above are classifiable under the provision for other women's, girls', or infants' ornamented wearing apparel, of manmade fibers, in item 382.04, TSUS, with duty at the rate of 42.5 percent ad valorem.

The remaining garment is a pair of bib-type snow pants with a front zippered opening, suspender-type straps, and a single pintuck running from the top of the neck area down the front of each leg, creating a crease. As stated above, the outer shell material comprising this garment has been coated or filled for tariff purposes with a rubber or plastics material. Accordingly, this garment is classifiable in item 376.56, with duty at the rate of 16.5 percent ad valorem.

(C.S.D. 79–171)

Classification: 4,4 Diamino Stilbene 2,2 Disulfonic Acid

Date: July 5, 1978
File: CLA–2:R:CV:MC
059383 JH

Your letter of April 10, 1978, concerns the dutiable status of 4,4 diamino stilbene 2,2 disulfonic acid from Italy.

You state that paranitrotoluene of U.S. origin will be shipped to Italy where it will be converted into 4,4 diamino stilbene 2,2 disulfonic acid. You inquire whether there would be any allowance in duty for the portion of the molecule which uses the paranitrotoluene.

All merchandise imported into the United States if fully dutiable unless specifically exempted therefrom. There is no exemption or partial exemption from duty for a product such as the imported one here. From a comparison between the two structural formulas, it is obvious that paranitrotoluene and 4,4 diamino stilbene 2,2 sulfonic acid are two different molecules. In view of the extensive manufacturing process involved, the desired product, for tariff purposes, would be a completely different manufactured product.

4,4 diamino stilbene 2,2 disulfonic acid is classifiable as a benzenoid cyclic organic chemical in item 403.60, Tariff Schedules of the United States (TSUS). The rate of duty is 1.7 cents per pound plus 12.5 percent ad valorem.

Benzenoid products which are competitive with similar products of U.S. origin are subject to ad valorem rates based on the American selling price of the domestic product.

(C.S.D. 79–172)

Classification: Isophorone Diamine and Isophorone Diisocyanate

Date: July 5, 1978
File: CLA–2:R:CV:MC
059388 JH

Your letter of April 13, 1978, concerns the dutiable status of isophorone diamine and isophorone diisocyanate (also known as 3-isocyantomethyl-3,5,5-trimethyl cyclohexyl isocyanate). These are said to be products of the European Economic Community.

Both of the above nitrogenous organic chemical products are classifiable under the provision for other nitrogenous compounds in item 425.52, Tariff Schedules of the United States (TSUS). The rate of duty is 1.5 cents per pound plus 7.5 percent ad valorem.

(C.S.D. 79–173)

Classification: Pompons of Manmade Fibers

Date: July 5, 1978
File: CLA–2:R:CV:MC
059377 JW

This is in reply to your letter of April 3, 1978, concerning the tariff status of pompons manufactured in Taiwan. Samples were submitted.

The samples consist of round balls approximately 1¼ inches in diameter. They are made of manmade fiber yarns that have been tied together and fluffed out in a spherical shape. You state that the articles are acrylic poms and that the merchandise is to be used primarily for the manufacture of toys, dolls, and decorations. You also state you may buy these pompons from Korea. We assume you mean South Korea.

Assuming that the articles are in chief value of manmade fibers, they are classifiable under the provision for other articles not specially provided for and not ornamented, in item 389.62, Tariff Schedules of the United States (TSUS), with duty at the rate of 25 cents per pound plus 15 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with inquiry.

(C.S.D. 79–174)

Classification: Infants' Denim Jeans With Nonfunctional Loops; Ornamentation

Date: July 5, 1978
File: CLA–2:R:CV:MC
059374 EA

In your letter of March 30, 1978, you request the tariff classification of a pair of jeans from Sri Lanka. A sample was submitted. The sample consists of infant's cotton denim jeans, having a zippered fly front with a single snap closure, rear yoke, flared legs, two belt loops created by an extension of the upper most part of the two front pockets, and a patch pocket with a snap closure flap located on the outside right leg beginning at, and extending below, the knee area. A strip of noncontrasting denim material, approximately one-half inch wide is sewn across the width of the pocket and additionaly secured to the pocket by four bar tacks, creating three loops.

Headnote 3(a)(ii), schedule 3, Tariff Schedules of the United States (TSUS), provides in pertinent part, that the term "ornamented" means articles of textile material which are ornamented with textile fabric. Accordingly, nonfunctional textile fabric, or textile fabric, the functional purpose of which is merely incidental to its principal function of adorning, embellishing, decorating, or enhancing the appearance of the textile article to which affixed, constitutes ornamentation for tariff classification purposes.

Since the yoke is composed not of an overlay, but of a fabric insert forming an integral part of the garment, such yoke is primarily functional. However, the textile loop appears to be primarily decorative in nature. As the garment is sized for wear by infants, and is in any event, not designed as a work garment, it does not appear that the loops would be utilized for hanging tools, etc., as is the case for a traditional carpenter's loop. Therefore the textile strip sewn across the patch pocket appears to be solely decorative in nature and constitutes ornamentation, for tariff purposes.

Accordingly, merchandise represented by your sample is classifiable under the provision for women's, girls' or infants' wearing apparel, ornamented, of cotton in item 382.00, TSUS, and is dutiable at the rate of 35 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–175)

Classification: Technical Manuals Imported With Flight Simulators; Entirety

Date: July 7, 1978
File: CLA–2:R:CV:MC
051190 EA

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
6 World Trade Center
New York, N.Y.

Re Decision on application for further review of protest Nos. 1001–6–004781, 1001–6–005162, and 1001–6–005163.

DEAR SIR: This decision concerns a protest timely filed against your decision in the liquidation of several entries at the port of New York as follows:

Entry No.	Entry date	Date of liquidation
324072	11/23/69	5/ 7/76
202615	8/31/70	4/30/76
510618	4/23/71	5/14/76
216384	10/11/72	4/30/76
230565	9/ 3/74	4/23/76

The issue raised by this protest is the proper tariff classification of technical manuals that were imported together with flight simulators and parts thereof.

You have determined that the technical manuals are classifiable under the same provision of the Tariff Schedules of the United States (TSUS), at the same rate of duty, as is applicable to the flight simulators. It is the protestant's position that the technical manuals, although imported together with the flight simulators, are separate articles of commerce and should be separately classifiable under the provision for books, not specially provided for, in item 270.25, TSUS, and entitled to duty-free entry.

While the protestant has not furnished this office with samples of the technical manuals, members of your staff who have viewed the manuals have described them as voluminous, highly technical, and geared specifically to the merchandise with which they have been imported. The manuals contain specific instructions and detailed technical diagrams with regard to the use and maintenance of the simulators. It would thus appear that the manuals are necessary to the proper operation of the flight simulator, and protestant has offered no evidence that the manuals have any utility other than in connection with such merchandise. In some instances the simulators and/or parts,

and the manuals were invoiced at a single contract price with no breakdown provided.

Under these circumstances this office views the flight simulators and technical manuals as a single article of commerce, an entirety for tariff purposes. Accordingly, the manuals are not separately classifiable as books, in item 270.25, TSUS.

You are therefore directed to deny the protest in full.

Your file is returned herewith.

(C.S.D. 79–176)

Classification: Whether a Pouch-Like Flap Sewn to the Breast Pocket of a Woman's Blouse Constitutes Ornamentation

Date: July 7, 1978
File: CLA–2:R:CV:MC
054880 LR

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, N.Y.

Re: Decision on application for further reviewof protest No. 100178158.

DEAR SIR: This protest was filed against the classification of certain merchandise in the liquidation on November 11, 1977, of entry No. 393161, dated May 25, 1977. The merchandise covered by this entry, described as ladies' woven sleeveless blouses, was classified under the provision for other women's wearing apparel, ornamented, of manmade fibers, in item 382.04, Tariff Schedules of the United States (TSUS). The protestant claims that such classification is inconsistent with a prior Customs ruling and that the merchandise should have been classified under the provision for other women's wearing apparel, not ornamented, in item 382.81, TSUS. A sample was submitted for our examination.

The garment is a sleeveless blouse which is stated to be in chief value of manmade fibers. On the front there is a left breast pocket measuring approximately 4½ inches wide and 5 inches deep. A pouch-like flap with an opening of approximately 1 inch wide and 1 inch deep is sewn to the face of the pocket.

The issue involved in the classification of the subject merchandise is whether this flap constitutes ornamentation for tariff purposes.

Textile fabric is one of the forms of ornamentation specifically mentioned in headnote 3, schedule 3, TSUS. Accordingly, textile fabric which is applied to a garment will constitute ornamentation

for tariff purposes if the primary purpose of that fabric is to decorate, embellish, adorn, or enhance the appearance of the garment (see *Blairmoor Knitwear Corp.* v. *United States*, 50 Cust. Ct. 338, C.D. 3396). It does not matter that the feature may perform an incidental functional purpose. Thus, the relevant determination here is whether the flap is primarily functional or primarily decorative so as to constitute ornamentation.

To support the position that the pouch-like flap does not constitute ornamentation, the protestant cites a Customs ruling dated January 8, 1976 (041252), which involved the classification of a shirt on which a pocket was attached to the face of another larger pocket. Although the garment was ultimately considered ornamented due to the presence of certain stitching, it was stated that the presence of the second pocket would not have rendered the garment ornamented if it served a utilitarian function. The ruling stated that the featured pocket was functional since it could be used for the temporary storage of small objects.

The crucial factor distinguishing the above case from the instant one concerns the dimensions of the two features. The pocket which was viewed as functional measured 2½ inches by 2¾ inches, about 2½ times the size of the flap opening herein involved. Whereas it is quite reasonable to assume that such a pocket would be used to carry small objects, it is not reasonable to assume the same of a pouch-like flap with a useable area of 1 square inch. The instant pouch-like flap is barely large enough to accommodate one coin. In addition, unlike the pocket in the cited ruling which was secured to the larger pocket on three sides, the instant feature hangs freely, another indication that it was not intended to store objects.

The protestant conjectures that the space may be used for the storage of a golf tee. It appears that if the pouch-like flap was so designed it would be deeper. As is, such an object could easily fall out since a significant portion of a standard golf tee would extend over the edge of the fabric.

This feature does not simulate a useable pocket and its dimensions are such that it is highly doubtful that it will be used as a pocket. It is our view that this feature was primarily intended to enhance the appearance of the garment and any utilitarian function it may serve is incidental.

Accordingly, we have determined that the merchandise was properly classified and you are hereby directed to deny the protest in full. Your file is returned herewith.

(C.S.D. 79–177)

Classification: Whether Ruffles on a Woman's Blouse Constitute Ornamentation

Date: July 11, 1978
File: CLA–2:R:CV:MC
059403 HG

This is in reply to your letter of April 25, 1978, concerning the tariff status of certain women's garments which we assume are products of Taiwan. A sample was submitted.

The submitted sample is a woman's woven blouse which is labeled to be 60 percent cotton and 40 percent polyester. It has long sleeves, a full front-buttoned opening, ruffled collar, and single-button ruffled cuffs. The ruffles are inserted into the edge seam between each of the two layers of fabric forming the collar and cuffs and are about one-half inch wide. The primary purpose of these ruffles appears to be to enhance the appearance of the blouse. Accordingly, they constitute ornamentation for tariff purposes.

Merchandise as represented by the submitted sample is classifiable under the provision for other women's or girls' ornamented cotton wearing apparel, in item 382.00, Tariff Schedules of the United States, with duty at the rate of 35 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–178)

Classification: Whether Yoke-Like Overlays on Western-Style Shirt Constitute Ornamentation

Date: July 17, 1978
File: CLA–2:R:CV:MC
055023 PR

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, N.Y.

Director, Classification and Value Division.

Request for internal advice No. 44/78, concerning the tariff classification of a western-style shirt.

The subject internal advice request concerns the tariff classification of a woman's or girl's western-style shirt manufactured in India.

The submitted sample is a long-sleeve shirt with single-button cuffs, a full front-buttoned opening with placket, a pointed collar, and a patch pocket with single-button flaps on each of the breast areas. It is made of a woven cotton material and has yoke-like overlays of the same fabric on the front shoulder areas and across the back shoulder. The back overlay comes to a single point in the approximate mid-center of the garment and is the standard western-style yoke which is subject to an established and uniform practice of classification as not constituting ornamentation for tariff purposes. The two front overlays also have single points in the approximate center of each of the front quarter panels.

Classification of the garment under the provision for other women's or girls' ornamented cotton wearing apparel, in item 382.00, Tariff Schedules of the United States (TSUS), is contemplated by your office because the front overlaid yoke segments extend upward from their single points, which are approximately 2 inches above the middle of each patch pocket, to the neck seam, approximately 1 inch above the placket. The importer believes that the shirt is a traditional western shirt and should not be considered ornamented for tariff purposes.

As was pointed out in your undated memorandum, file CLA–2–03, S:C:D5–SPO–130, a uniform and established practice exists to classify traditional western-style shirts with overlaid yokes as not ornamented. It is further stated that this practice has been limited to traditional western-style yokes that have single points at their approximate midareas and that extend from the arm/shoulder seam to the placket or to the juncture of the neck seam and the placket. It is your opinion that if the yoke ends on the neck seam upward from the placket it is not subject to the practice of classification and, therefore, constitutes ornamentation for tariff purposes.

As you indicated, all prior rulings by this office on overlaid western-style yokes on shirts have held that plain single-pointed yokes on an otherwise western-style shirt would not constitute ornamentation for tariff purposes. We are unable to locate any rulings that describe the single-pointed yokes that were not held to be ornamentation in such detail as to preclude the instant garment from falling within the purview of those rulings. While not stated in those rulings, it was understood that the yokes which were the subject of the practice were of reasonable width; that the two edges of each overlay which tapered down to form the single point were straight or slightly curved and at approximately the same angle; that the point was not excessive in length; and that the point was not unreasonably narrow or wide. The

front yokes on the instant garment meet all these qualifications and present the same appearance as the overlaid yokes on shirts previously ruled on. While this latter aspect is immaterial in determining the classification of the garment, it is believed that it would be unreasonable to importers and manufacturers attempting to follow our rulings to require something that is either not stated or reasonably understood to be in those rulings.

Accordingly, the overlaid yokes on the front shoulder areas of the instant garment will not cause that garment to be classified under the ornamented provisions of the tariff schedules and that garment is classifiable under the provision for other women's or girls' cotton wearing apparel, not ornamented and not knit, in item 382.33, TSUS.

(C.S.D. 79–179)

Classification: Beef Steaks and Ground Beef

Date: July 24, 1978
File: CLA–2:R:CV:MC
059410

Your letter of April 25, 1978, requests on behalf of (name) the tariff status of certain meat products.

The products shipped from New Zealand and Australia to Canada for processing are described as follows:

1. Beef knuckles will arrive in a solid form, frozen and packed in 60-pound boxes. The knuckles are then sliced into 5-, 7-, and 10-ounce steaks which are then mechanically tenderized with the use of a Ross and/or Hollymatic needling machine. The steaks are then marinated in a tenderizing solution comprised of water, salt, sugar, spice, hydrolized plant protein, ficin, and citric acid. Both the needling and the marination procedures have the effect of tenderizing the steaks. The steaks will then be packed 50 steaks to a carton and 3 cartons to a shipping container. The product will be imported into the United States frozen for sale to restaurants.
2. Tenderloins will arrive in solid pieces in 60-pound boxes and will be frozen. The product will then be sliced into 7-ounce fillets and marinated in a solution of water, salt, sugar, spices, hydrolized plant protein, ficin, and citric acid for the purpose of tenderizing and adding flavor to the fillets. The product will then be packed 50 to the carton and 3 cartons to the shipping container and imported into the United States frozen for sale to restaurants.

The ground beef of Canadian origin will be mixed with water, extenders, and flavorings and formed into patties. The ingredients of

this product are: Beef, water, toasted wheat crumb, rice flour, skim milk powder, salt, hydrolized plant protein, spice. These patties will be packed 60 pieces per carton, 3 cartons per shipping container. The product will then be imported into the United States in frozen form for sale to restaurants.

The boneless beef steaks of 5, 7, and 10 ounces, and marinated, are classifiable under the provision for beef, prepared or preserved, in item 107.60, Tariff Schedules of the United States (TSUS), dutiable at the rate of 10 percent ad valorem if valued over 30 cents per pound. The ground beef is similarly classified in item 107.60, TSUS, dutiable at the rate of 10 percent ad valorem if valued over 30 cents per pound.

(C.S.D. 79–180)

Carrier Control: Coastwise Trade; Crane Vessel Used to Erect Offshore Drilling Rig

Date: July 27, 1978
File: VES–3–15–R:CD:O
103559 JM

This is in reference to your letter dated July 10, 1978, concerning the use of foreign-flag crane vessels at oil drilling platforms on the U.S. Outer Continental Shelf.

Generally speaking, coastwise trade involves the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, and between such points and artificial islands and fixed structures erected on the Outer Continental Shelf for the purpose of exploring for or exploiting the resources of the subsoil or seabed. Where the movement of material is effected exclusively by operation of the derrick crane and not by the movement of the vessel, except for necessary movements that are incidental to a lifting operation while it is taking place, Customs will not regard the use of the vessel, including her carriage of the supplies, equipment, and personnel necessary to her operation and navigation, as a use in coastwise trade. She may engage in the use indicated in territorial waters of the United States, may from time to time enter U.S. ports for repairs, and may lay over in U.S. ports between job assignments, while documented as a vessel of the United States, while under foreign registry, or while undocumented.

While the use of a crane vessel as outlined in the preceding paragraph would not constitute a violation of the coastwise laws, coastwise transportation of merchandise for any distance by movement of the

vessel would violate title 46, United States Code, section 883, which subjects illegally transported merchandise to forfeiture.

You state that the crane vessels are being used to move the components to offshore platforms in their "final rest place on the U.S. Outer Continental Shelf." The Customs and navigation laws, including the coastwise laws, have been extended to oil drilling rigs during the period when they are secured to or submerged onto the Outer Continental Shelf for drilling operations (see T.D. 54281(1), copy enclosed). Since the transportation stated above would occur prior to the drilling platform becoming a fixed structure on the Outer Continental Shelf, there would be no coastwise transportation and therefore no violation of section 883.

If you have evidence that a specific vessel is being used in violation of the coastwise laws, we will request the appropriate District Director of Customs to make a report on the matter after the information concerning the violation has been received by this office. The information should include the name of the vessel and the exact location of the crane vessel at the time of the alleged violation. Meanwhile, copies of your letter and this reply are being forwarded to the Regional Commissioners of Customs at Houston, Tex., and New Orleans, La.

(C.S.D. 79–181)

Classification: Man's Fishing Shirt; Ornamentation

Date: August 1, 1978
File: CLA–2:R:CV:MC
059324 EA

In your letter of March 28, 1978, you inquired as to the tariff classification of a man's fishing shirt from Hong Kong, designated sample B. As per your request, your inquiry of November 28, 1977, with regard to another fishing shirt is withdrawn.

Sample B is a woven shirt, in chief value of cotton, containing four front pockets with button-down flap closures. The lower left front pocket contains an expandable box pleat and adjacent to this pocket is a smaller patch pocket which is compartmentalized by a single row of vertical stitching. The left compartment contains a series of pleats to allow for expansion. There is a large patch pocket across the width of the back that is sewn closed across the top, bottom, and halfway up both sides and contains side flaps with button closures. A button closure textile tab is present above the top left front pocket, and epaulets are present on each shoulder.

Headnote 3(a)(iii), schedule 3, Tariff Schedules of the United States (TSUS), provides, in pertinent part, that the term "ornamented" means articles of textile material which are ornamented with tucking or textile fabric. Accordingly, nonfunctional tucking and textile fabric, or tucking and textile fabric, the functional purpose of which is merely incidental to its principal purpose of adorning, embellishing, decorating, or enhancing the appearance of the textile article to which affixed constitutes ornamentation for tariff purposes.

It is your position that none of the above-described features constitute ornamentation as all such features are functional. With regard to the pockets, back and front, expandable or otherwise, and with regard to the textile flap above the upper left front pocket, such features would not constitute ornamentation. Such features are common on shirts and vests designed specially for fishing that are displayed in several major sporting goods stores in the Washington, D.C. area. In addition, such features are depicted in advertisements appearing in periodicals devoted to fishing as being utilized to hold a large range of fishing equipment. On the other hand, epaulets did not appear as a common feature of such shirts and vests and were not featured in wearing apparel advertisements. While this is not dispositive of the issue, and while it is envisioned that the epaulets could be susceptible of some use, it appears that they are primarily decorative, serving only incidentally to hold nets or other items. As such, the epaulets would constitute ornamentation for tariff purposes.

You further suggest, as an alternative to classification as wearing apparel, classification under the provision for other fishing equipment in item 731.60, TSUS. There is an established practice by the Customs Service to classify wearing apparel designed to be worn while fishing, under one of the wearing apparel provisions in schedule 3. The "Tariff Classification Study," explanatory materials, CIE 1/64, a source of legislative history with regard to the tariff schedules, provides the following on p. 596:

> Item 731.60 is the basket provision for this subpart to cover all other equipment designed for sport fishing, all other fishing tackle, and parts of such equipment and tackle, all the foregoing not specially provided for. The existing "basket" provision (referring to the Tariff Act of 1930) for fishing tackle is limited to those articles which are used in luring and "hooking" fish and does not include such articles as fly books or boxes, gaffs, fish landing nets and bait boxes. Some of these articles, such as fly books and fly boxes are now specially named among the other provisions for fishing tackle in paragraph 1535. Other articles, however, such as gaffs, are dutiable under other paragraphs of the tariff act. In order to bring all of these *related*

articles together the existing "basket" provision has been expanded to include equipment designed for sport fishing. (Italic added.)

Since wearing apparel is in no way related to the articles enumerated in the explanatory materials, it does not appear that such articles were intended to be covered by the basket provision for equipment. It is additionally noted that shirts do not fall within the class of articles which are commonly and commerically known as fishing equipment.

Accordingly, merchandise represented by the sample is classifiable under the provision for men's or boys' wearing apparel, ornamented, of cotton in item 380.00, TSUS, dutiable at the rate of 35 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–182)

Vessel Repair: Repair of Damaged Motor for Use as a Spare

Date: September 12, 1978
File: VES–13–18–R:CD:O
103407 JM

REGIONAL COMMISSIONER OF CUSTOMS,
New Orleans, La.

DEAR SIR: This is in reply to a memorandum dated April 17, 1978, from the Director, Classification and Value Division, transmitting a petition from (name) filed under section 4.14(k), Customs Regulations, in connection with foreign repairs to the (vessel name) declared under title 19, United States Code, section 1466, on vessel repair entry No. 78–218217 dated February 24, 1978.

The record shows that six winch motors suffered seawater damage on a voyage of the (vessel) to the Far East. Four of the motors were dried out and made operable. The two remaining motors were replaced by spare motors carried aboard the vessel. In order to have a spare motor available on the return trip, one of the damaged motors was taken ashore in Manila, repaired and placed aboard the vessel as a spare.

In order for the duty on the purchase of the subject motor to be remissible, the vessel must have been compelled, by stress of weather or other casualty, to put into a foreign port and purchase the motor to secure the safety and seaworthiness of the vessel. We do not believe that repair to the motor for use as a spare was necessary to secure the safety and seaworthiness of the vessel. The duty is not remitted.

For the reasons stated above, the cost of the repairs to the motor for use as a spare are dutiable. Your file is returned herewith.

(C.S.D. 79–183)

Vessel Repair: Repairs Not Occasioned by Stress of Weather or Other Casualty

Date: September 13, 1978
File: VES–13–18–R:CD:C
103554 JM

REGIONAL COMMISSIONER OF CUSTOMS,
San Francisco, Calif.

DEAR SIR: This is in reply to your memorandum of July 6, 1978 (VES–13–0:CV:LIQ TL), transmitting a petition from (name) filed under section 4.14(k), Customs Regulations, in connection with foreign repairs to the (vessel name) declared under title 19, United States Code, section 1466, on entry No. 100148 dated January 4, 1977.

Although the petition was not filed within the time constraints imposed by section 4.14 of the Customs Regulations, we have decided to review the petition on its merits as you recommended.

The petitioner states that the forced draft fan of a sister ship was found to need repairs, that petitioner decided to advise the (vessel) to check for possible defects, that inspection revealed cracked fan blades, that the repairs were made in Gilbraltar, that the repairs were unforeseeable because the vessel was only 2½ years old and that the repairs were necessary to prevent further damage. When the repairs were completed, the ship was unable to raise the port anchor and repairs to the windlass were required.

It is your opinion that the breakdown or failure of machinery is not regarded as a casualty in the absence of force exerted from an outside force, but should be considered the result of normal wear and tear. We agree with your position.

CIE 1829/58 holds that a breakdown in machinery is not regarded as a casualty in the absence of extrinsic force unless the record shows that the difficulty could not have been foreseen. While CIE 1161/62 provides that the element of foreseeability no longer is dispositive, we affirm that a breakdown or failure of machinery may not be regarded as a casualty in the absence of a showing that it was caused by some outside force.

We are of the opinion that the petitioner has not presented good and sufficient evidence that the vessel was compelled by stress of weather or other casualty, while in the regular course of her voyage, to put into a foreign port to effect repairs. The petitioner offers no suggestion that the damages occurred other than by reason of the breakdown of the machinery. This breakdown may well have been caused by normal wear and tear. Accordingly the petition is denied.

(C.S.D. 79-184)

Classification: Brake Fluid Exported for Repackaging and Returned

Date: September 15, 1978
File: CLA-2:R:CV:MC
059672 MG

This ruling concerns Customs classification of certain brake fluids.

Issues.—What is the classification of a brake fluid which is a mixture of polyglycols and polyglycol ethers?

Does the provision for American goods returned in item 800.00, Tariff Schedules of the United States (TSUS), apply to a brake fluid exported from the United States in 40,000-pound tanks and repackaged abroad in 12-fluid-ounce cans?

Facts.—The importation of two types of brake fluids is proposed. The first is a product of Canada which is a clear, light-yellow liquid, with a faint ether odor, denominated "450 Brake Fluid Extra Heavy Duty." A sample was submitted. Chemical analysis showed the product to consist of a mixture of polyglycols and polyglycol ethers. The product was stated to contain traces of inhibitors, but none were found in analysis.

The second product is a brake fluid denominated "550 Disc Brake Fluid," which is a clear, golden-yellow liquid with a faint ether odor. A sample was submitted and, on analysis, was shown to consist of a

mixture of polyglycols with some polyglycol ethers. This product is produced in the United States and exported to Canada in 40,000-pound tanks. The product is then packaged in 12-fluid-ounce cans for return to the United States. This ruling conditions classification of this product in 800.00, TSUS, on the assumption that nothing is done to the brake fluid in Canada other than placing it into the 12-fluid-ounce containers.

Law and analysis.—Item 430.00, TSUS, applies to mixtures of two or more organic compounds. Because the polyglycol and polyglycol ether components of the "450 Brake Fluid Extra Heavy Duty" are nonbenzenoid, organic compounds, the brake fluid is provided for in item 430.00, TSUS. The component polyglycols and polyglycol ethers are classifiable separately under the provision for other alcohols, polyhydric (including glycols, polyglycols diols, and polyols), and esters, ethers, and ether-esters and substituted derivatives of any of the foregoing, in item 428.46, TSUS.

The U.S. Customs Court, in *Border Brokerage Company, Inc.* v. *United States*, 65 Cust. Ct. 50, C.D. 4852 (1970), held:

> [T]he test to be applied in item 800.00 cases is whether the merchandise of American origin has itself (apart from its container) been the object of advancement in value or improvement in condition while abroad.
>
> [A]bsent some alteration or change in the articles themselves, the mere sorting and repacking of goods, even for the purpose of sale to the ultimate consumers, are not sufficient to preclude the merchandise from being classified as returned American products under item 800.00 of the tariff schedules.

This position has been followed in *United States* v. *John V. Carr & Sons, Inc.*, C.A.D. 1118 (May 16, 1974), and T.D. 75–57(2) (Feb. 25, 1975). In keeping with these authorities, we conclude that the mere transfer of the "550 Disc Brake Fluid" from 40,000-pound tanks to 12-fluid-ounce cans does not advance the value of or improve in condition the exported brake fluid so as to preclude application of item 800.00, TSUS, upon reentry into the United States.

Holding.—"450 Brake Fluid Extra Heavy Duty" is classifiable in item 430.00, TSUS, and dutiable at 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component material having the highest rate of duty is classifiable in item 428.46, TSUS, and is dutiable at 1.5 cents per pound plus 7.5 percent ad valorem.

Providing the conditions set forth in this ruling are met, "550 Disc Brake Fluid" qualifies for treatment as American goods returned in item 800.00, TSUS, and may be entered duty free.

(C.S.D. 79–185)

Valuation: Method for Determining Ad Valorem Equivalent Under Item 806.30, TSUS

Date: Sept. 22, 1978
File: R:CV:V BS
054991

To: District Director of Customs, Detroit, Mich.
From: Director, Division of Classification and Value.
Subject: I.A. 17–78; proper method of determining an ad valorem equivalent under TSUSA item 806.30 for articles sold on a CIF duty-paid, delivered price.

This is in reference to your memorandum dated February 7, 1978, regarding the above-captioned matter.

The merchandise in question consists of scrap metal sent abroad for processing and returned to the United States for further processing under item 806.30. In arriving at a selling price, the foreign processor utilizes the average U.S. selling price for his product as published in the American Metal Working News. Inasmuch as the articles are sold on a CIF duty-paid, delivered price, the foreign processor estimates the duties and brokerage that will be paid in arriving at its selling price. Any amount paid in excess of the estimate will reduce its profit, and conversely, if the estimates are high, the processor's profit will be increased. The merchandise is subject to a specific rate of duty.

Customs officers at different ports are using various methods of computing the ad valorem equivalents for identical shipments, resulting in different ad valorem equivalents. The question at issue is to determine the appropriate method to be used.

In determining an ad valorem equivalent, the total amount of duty that would be due if the articles were fully dutiable is divided by the total appraised value of the article if fully dutiable. The resultant ad valorem equivalent is then applied to the cost of processing to determine the actual duty due.

In determining the value of the articles, one Customs officer would allow a deduction for duty equal to the amount that the exporter has estimated is applicable to the value of the processing (example A). Another Customs officer would allow a deduction for duty for the CIF duty-paid invoice price, equal to the full duty if wholly dutiable example B). A third method would be to construct a value of the shipment by determining the sum of the cost of the U.S. scrap, transportation costs from the United States to the Canadian plant, and the processing cost (including profit). However, it appears that this latter

method would be difficult to utilize, since costs vary on a shipment-by-shipment basis and thus appropriate cost information would be difficult to obtain.

Accordingly, the initial step is to determine the appraised value of the merchandise. Although not in the record, it appears from conversation with the involved import specialist that the importer is a selected purchaser, that the price of the merchandise fairly reflects the market value and that the other criteria used in establishing a statutory export value are satisfied. Assuming then that an export value is applicable, the actual duty, freight, and brokerage must be deducted from the CIF duty-paid price in order to determine an appraised value. This result is dictated by the court in *United States* v. *Josef Mfg., Ltd.* (460 F. 2d 1097, 59 CCPA 146 (1972)).

Therefore, a determination that export value is the appropriate basis of appraisement will result in the use of the method set forth and the cost of processing (including usual general expenses and profit). under example B in determining an ad valorem equivalent.

If an export value cannot be determined, then constructed value would presumably be used as the basis of appraisement, since it is apparent that U.S. value does not exist. In such case, the appraised value would be determined by establishing cost of the U.S. scrap, the transportation costs from the United States to the Canadian plant, and the cost of processing (including usual general expenses and profit).

(C.S.D. 79–186)

Valuation: Hats Manufactured in One Foreign Country and Modified in Another Prior to Importation; Basis of Appraisement

Date: September 25, 1978
File: R:CV:V
541826 BNS

This ruling concerns the Customs valuation of hats.

Issue.—(1) What is the proper country of exportation for hats which are manufactured in the Republic of Korea and modified in Canada prior to being imported into the United States?

(2) What is the proper basis of appraisement for hats such as those previously described?

Facts.—The hats are baseball-style caps which are manufactured in the Republic of Korea. The hats cost CA $7.70 per dozen f.o.b. factory. Before being imported into the United States, the hats will be shipped to Canada where three patches will be heat sealed to them.

The total cost of the above modification is CA $8.40 per dozen hats. The finished hats are thereafter to be imported into the United States where they are to be used solely for promotional purposes. The hats are not intended to be sold in their imported condition.

Law and analysis.—The classic statement regarding "country of exportation" was set forth in *United States* v. *G. W. Sheldon & Co.* (*Damon Raike & Co.*), 53 Treas. Dec. 34, T.D. 42541 (1928):

> Merchandise imported from one country, being the growth, production, or manufacture of another country, must be appraised as its value in the principal markets of the country from which immediately imported, unless it is shown that it was destined for the United States at the time of original shipment without any contingency of diversion.

The above statement is very similar to part 152.23, Customs Regulations (19 CFR 152.23), which provides in pertinent part as follows, for the treatment of merchandise imported from intermediate countries:

> Merchandise imported from one country, being the growth, production, or manufacture of another country, shall for value purposes (see secs. 402, 402a, Tariff Act of 1930, as amended; 19 U.S.C. 1401a, 1402) be treated as an exportation of the country from which it is immediately imported. However, if it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the United States at the time of original shipment, it shall be treated as an exportation of the country from which it was originally exported.

In the situation presented, the critical element is the fact that the caps which will eventually be imported into the United States are to be further processed in Canada, an intermediate country. The product actually manufactured in Korea is a plain baseball-style cap. When the caps are shipped to Canada, they will undergo further treatment by having the patches heat sealed to them. The question of further treatment or processing in an intermediate country was touched upon in *F. W. Hagemann* v. *United States*, 24 Cust. Ct. 587, Reap. Dec. 7815 (1950), *aff'd*, 39 CCPA 182, C.A.D. 484 (1952). In that case, in which the question was whether the country of origin for a particular chemical was either Germany or the Netherlands, the dispute centered on whether the German-manufactured chemical had been further processed in Holland after having been sent to Rotterdam for exportation to the United States. The Court of Customs and Patent Appeals held that the imported merchandise "did not enter into the trade or commerce of the Netherlands and was not subject to any processing or treatment there; and that the Dutch company was the export agent

of the German manufacturer." A careful reading of the lower court ruling creates the inference that if that court was convinced that an additional chemical was added to the one shipped from Germany in order to create the product desired by the U.S. importer, the court would have found the Netherlands to be the country of exportation.

A reading of the *G. W. Sheldon* case, *supra*, the above-cited Customs Regulations, the *F. W. Hagemann* cases, *supra*, and *Hospitaline, Inc.* v. *United States*, 48 Cust. Ct. 563, Reap. Dec. 10177 (1962), *aff'd*, 50 Cust. Ct. 556, A.R.D. 156 (1963), discussed *infra*, leads to the conclusion that there are four tests that must be met before an "intermediate" country is ruled out as the country of exportation:

1. No part of the merchandise was intended for diversion into the commerce of the intermediate country;
2. None of the goods were, in fact, diverted into the commerce of the intermediate country;
3. A contingency of diversion did not exist; and,
4. None of the merchandise was in any way treated, processed, altered, manipulated or changed in character in the intermediate country.

"Contingency" is defined by "Black's Law Dictionary" (Fourth ed. 1968) as "the possibility of coming to pass; an event which may occur; a possibility * * *." One of the latest cases which dealt with the concepts of "contingency of diversion" and "country of exportation" was *Hospitaline, Inc.* v. *United States*, *supra*. Therein, the lower court found that Japan was the country of exportation and no contingency of diversion existed where a Canadian firm ordered merchandise for a related American firm from a Japanese manufacturer, retained the merchandise in a Canadian warehouse, and shipped the merchandise to the United States when needed by the American company. The merchandise eventually shipped to the United States had different markings than the merchandise sold for home consumption in Canada. Among its findings of fact were:

5. That the merchandise per se was not manipulated, altered, or changed in any way while in Canada.
6. That none of said merchandise was sold or offered for sale in Canada.

The appellate court in *Hospitaline* affirmed the lower court in every major point, but in the course of its opinion stated that the merchandise "was not manipulated in Canada, *except* for relabeling and, in some cases, repacking" (italic supplied). The court, therefore, was of the opinion that relabeling and repacking, although constituting manipulation, was not of a sufficient degree to qualify Canada as the "country of exportation." Similarly, the court found that no "con-

tingency of diversion" existed. In making this finding, the court considered that the merchandise before it was not sold in Canada in the condition in which it was warehoused; therefore, it implicitly found that was no reasonable possibility that this merchandise would be sold or offered for sale in Canada.

One of the earliest cases cited in connection with the problem of whether an intermediate country consitituted the country of exportation with respect to imported merchandise is *United States* v. *Meadows, Wye & Co. (Inc.)*, 49 Treas. Dec. 959, T.D. 41662 (1926). The *Meadows* court held that the acts of rebilling and repacking merchandise by an importer's agent in an intermediate country did not act to cause the merchandise to enter the commerce of that country. In support of this conclusion the court stated: "Commerce means trade. Commerce requires two parties, a buyer and seller." Therefore, in order for an article to be considered as having entered the trade or commerce of an intermediate country it must be shown that the article was sold or offered for sale therein.

From the facts presented in the instant case we agree that no contingency of diversion exists and that the intent of the importer is to have the final product sent to the United States, see generally, *T. M. Duche & Sons, Inc.* v. *United States*, 49 Cust. Ct. 377, Reap. Dec. 10325 (1962). However, because the merchandise in question is further processed or treated in an intermediate country, for appraisement purposes, the country of exportation is Canada.

With reference to the proper basis of appraisement, 19 U.S.C. 1401a (a) provides that in appraising merchandise, export value, U.S. value, or constructed value shall be used respectively, depending upon whether either an export value or U.S. value can be determined satisfactorily. Export value, U.S. value, and constructed value are defined in 19 U.S.C. 1401a (b), (c), and (d).

The definitions for export value and U.S. value found in 19 U.S.C. 1401a (b) and (c) provide that such or similar merchandise as that undergoing appraisement must have been freely sold or, in the absence of sales, offered for sale in the country of exportation and in the United States.

From the facts presented, it appears that such or similar merchandise is neither sold nor offered for sale either in the country of exportation (Canada) or in the United States. Therefore, neither an export value nor a U.S. value can be determined satisfactorily for the merchandise in question. Accordingly, constructed value as defined in 19 U.S.C. 1401a(d), appears to be the proper basis of appraisement in the instant situation. The value of the merchandise would therefore

include the cost of materials (CA $7.70 a dozen), fabrication (CA $8.40 a dozen), freight from Korea to Canada, containers, and an amount for general expenses and profit equal to that usually reflected in sales by Canadian producers of merchandise of the same general class or kind.

Holding.—For appraisement purposes the country of exportation for the subject caps is Canada. From the facts presented it appears that the proper basis of appraisement is constructed value.

(C.S.D. 79–187)

Carrier Control: Status of Drill Barge Which Drills for Oil and Gas in U.S. Territorial Waters

Date: September 25, 1978
File: VES–3–13–R:CD:C
103662 CH

This ruling concerns the use of a drill barge in drilling for oil and gas in territorial waters of the United States.

Issue.—Is the use of a vessel solely to drill for oil and gas in territorial waters of the United States a use in coastwise trade?

Facts.—The vessel is a drill barge capable of drilling oil and gas wells only in shallow waters no deeper than 18 feet. The vessel must be towed from one location to another. When located for drilling, it is submerged until it rests on the bottom, where it may also be supported by pilings. Once positioned for drilling, it stays in position until drilling is completed. The barge is not used for the transportation of goods or persons except for the supplies on board when such a move is made and the crew required for the move.

Law and analysis.—Coastwise trade, within the meaning of the coastwise laws, is generally defined as the transportation of passengers between points embraced within the coastwise laws, including point within territorial waters. In this context the legitimate equipment and stores of the drill barge for use in drilling would not be considered merchandise and the crew would not be considered passengers. The contemplated use would, accordingly, not be considered coastwise trade within the meaning of the coastwise laws.

Holding.—The use of a drilling barge solely to drill for oil and gas in territorial waters of the United States does not constitute coastwise trade within the meaning of the coastwise laws.

(C.S.D. 79–188)

Country-of-Origin Marking: Locks Marketed in Plastic Blister Packs

Date: September 27, 1978
File: MAR–2–01–R:E:R
709458 JW

This ruling concerns the marking requirements of imported locks, where the container bears a U.S. address.

Issue.—Whether the marking requirements have been sufficiently complied with when an importer's U.S. address is printed on the front and back of a container, and the country-of-origin marking is printed only on the back of the container.

Facts.—The submitted sample is an imported "punchlock" from Japan, and is enclosed in a plastic blister pack, that is attached to a cardboard card. The front of the package is multicolored, with the importing firm's name and address information on the front. The back of the package is printed with certain instruction information, the name and address of the importer, with "Made in Japan," appearing at the bottom of the package.

Law and analysis.—The Tariff Act of 1930, as amended (19 U.S.C. 1304), requires every article of foreign origin imported into the United States to be marked to indicate to an ultimate purchaser the country of origin of the article. This requirement is subject to certain exceptions, however. One such exception to the marking requirement exists if the marking of a container of such article will reasonably indicate the origin of such article. However, section 134.46 of the Customs Regulations requires that in any case in which the words "United States," or "American," the letters "U.S.A.," or the name of any city or locality in the United States appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning. Accordingly, the marking on the package is not in compliance with section 134.46, Customs Regulations.

Holding.—The front of the package containing the importing firm's name and address information must also include the country of origin preceded by "Made in," or other similar words, or, alternatively, the U.S. address must be deleted from the front of the card.

(C.S.D. 79–189)

Classification: Doll Clothing "Imported Separately"

Date: September 28, 1978
File: CLA–2:R:CV:MA
056500 JB

Your inquiry of March 28, 1978, requests a clarification of the term "imported separately" as it appears in item 737.21, Tariff Schedules of the United States (TSUS), which provides for "doll clothing imported separately." Item 737.21, TSUS, is a new provision promulgated by Executive Order 12041 of February 25, 1978. Doll clothing imported separately had been provided for as dolls and parts of dolls, including doll clothing, under old item 737.20, TSUS, but that provision was superseded by items 737.21 and 737.22, TSUS, under this latest Executive order.

As a general rule, all doll clothing not worn by the doll and not packed within the same retail package as the doll would be considered to be "imported separately" from the doll. Under item 737.22, TSUS, which provides for dolls with or without clothing, the term "with" should be interpreted to mean on or packed in the same retail package as the doll.

You pose several questions which should be answered in light of the above considerations:

1. If a doll is imported enclosed in retail packaging such as a cellophane-covered box and such a doll is dressed or undressed, would additional clothing in such a box be classifiable under item 737.21, TSUS? No; the doll clothing would not be classifiable as doll clothing imported separately because it is packed in the same retail package as the doll.
2. If the doll was undressed, would one outfit be classifiable as an entirety with the doll and would additional outfits packaged with the doll be classifiable under item 737.21, TSUS? No; all the doll clothing would not be classifiable as doll clothing imported separately, because it is packed in the same retail package as the doll. A doll and one set of clothing are not considered to be an entirety per se.
3. If a doll is imported enclosed in retail packaging such as a cellophane-covered box and the same export carton contains separate retail boxes containing doll clothing, would such doll clothing be classifiable under item 737.21, TSUS? Yes; this doll clothing would be considered to be imported separately because it is not in the same retail package as the doll.
4. If there were additional sets of clothing, would additional sets are packaged in separate retail packages from the doll, they would be classifiable as doll clothing imported separately.

5. If dolls without retail packing (bulk packed in an export carton) are imported on the same vessel as separately packaged doll clothing outfits which are in equal number to the dolls are the dolls and doll clothing considered to be entireties and therefore classifiable as dolls, with or without clothing, under item 737.22, TSUS? No; the doll clothing is considered to be imported separately because it in not packaged in the same retail package as the dolls.
6. If the doll clothing is not intended to be commercially marketed with dolls which are included in the same shipment, is the clothing considered to be imported separately from the dolls? Again, if the doll clothing is imported in the same retail package as the doll, it is not considered to be imported separately. The fact that the dolls are not intended to be marketed with the clothing is not controlling.

It should be noted that articles classifiable under item 737.21, TSUS, that are manufactured in a designated beneficiary country may qualify for entry free of duty under the generalized system of preferences (GSP), upon compliance with all appropriate regulations.

(C.S.D. 79–190)

Carriers: Transportation of Domestic Crude Oil to Foreign Port and Back to United States by Foreign Vessel

Date: September 28, 1978
File: VES–3–R:CD:C
103504 LLR

This ruling concerns the application of the Jones Act (46 U.S.C. 883).

Issue.—Does a violation of the Jones Act occur when a product of the United States, refined crude oil, is laded on board a foreign-flag vessel at one point in the United States, transported to a foreign port but not offloaded at the foreign port, and returned to the same point in the United States?

Facts.—(Company) wishes to test a new procedure for minimizing the hazard of explosion in the transportation of hydrocarbons. As part of the program, (company) is installing equipment to fill the empty space above the top of the cargo in the tanks with an inert gas, and tests must be conducted in order to determine whether the inert gas will contaminate the cargo. The reliability of these tests depends upon the simulation of actual conditions.

(Company) proposes to load 100,000 barrels of gasoline and heating oil, both of which are products of the United States, aboard a Liberian-

flag vessel, at a U.S. port, prior to sailing to (foreign country). In (foreign country), the vessel will load approximately 225,000 barrels of low-sulfur fuel oil for import to the United States. The fuel cargo loaded in the United States will not be offloaded and would remain segregated from the cargo loaded in (foreign country). The vessel will return to the "same point" from which it cleared, at which time the test cargo would be returned to its source of origin to test the effects of inerting.

The inert gas referred to is the exhaust gas obtained from the stack of the vessel and is composed of carbon dioxide, carbon monoxide, and water. The gas is generated by the boiler fires as the vessel gets underway. Once generated, it is cleaned aboard ship and introduced directly into the safety system.

Law and analysis.—46 U.S.C. 883 provides, in part, that:

> No merchandise shall be transported by water * * * on penalty of forfeiture thereof, between points in the United States, * * * either directly or via a foreign port * * * in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States * * *.

In the situation described, there would not be any coastwise transportation of cargo or merchandise because merchandise was not being transported "between" coastwise points: The gasoline and heating oil will be offloaded at the "same point" they were originally laden on board the vessel.

In addition, because there is no intention to export the test cargo which consists of products of the United States, it can be returned under item 800.00, TSUS, upon compliance with section 10.1, Customs Regulations.

Holding.—A product of the United States may be laded on board a foreign-flag vessel at one point in the United States, transported to but not offloaded at a foreign port, returned to the same point in the United States, and offloaded without violating the Jones Act and without incurring liability for the payment of duty.

(C.S.D. 79-191)

Brokers: Liability for Filing False Information Supplied by Importer

Date: September 29, 1978
File: ENF-11-01 R:E:E
306471 W

This refers to your letter of September 5, 1978, inquiring as to what degree Customs will hold liable a customhouse broker who has signed

Customs form 3299, "Declaration for Free Entry of Unaccompanied Articles," on the basis of facts obtained from the importer where undeclared merchandise or contraband is found.

A broker may be named and assessed a penalty on a violation arising out of the submission of false documents or information on any transaction in which he participates, in accordance with 19 U.S.C. 1592. A broker is also subject to disciplinary action against his license for violations of sections 111.32 and 111.39(b) of the Customs Regulations, which involve the filing of false information.

With respect to violations of 19 U.S.C. 1592, and pursuant to 19 U.S.C. 1618, a broker acting on behalf or as the agent of the importer would be held liable and subject to applicable penalties only if he: (1) Committed an intentional violation; or (2) is otherwise culpable and shared in the financial benefits of the violation. If both the importer and broker are actually culpable and shared in the financial benefits, they may jointly and severally be assessed the full claim for forfeiture value, or forfeiture, and any mitigated penalties. However, a broker will not be held as a surety to make the Government whole, by payment of the actual loss of revenue, where he himself is not guilty of a violation. If a broker commits a negligent violation without sharing in the financial benefits, the assessed penalty may be mitigated to a flat sum appropriate to the degree of negligence. The filing of an entry as importer of record (in his own name on behalf of an importer), would not necessarily make the broker liable for the actual loss of revenue or any penalty, "if" he acted with due diligence and reasonably relied on the information supplied to him. Consequently, where a broker files certain documents (e.g., CF–3299) relying on information supplied by the importer, and the broker had reasonable cause to believe the truth of the documents submitted he will not be liable.

(C.S.D. 79–192)

Generalized System of Preferences: Delayed Shipment of Merchandise Entered After the Effective Date of Removal From GSP Eligibility

Date: September 29, 1978
File: ENT–1–01 R:E:E
306556 W

This refers to your letter of September 15, 1978, with attachments, requesting our review of the action of Customs at Baltimore and their letter of June 9, 1978, in which duty-free treatment under the generalized system of preferences (GSP) was denied a shipment of clams from

the Republic of Korea entered on March 17, 1978. You have requested a refund or clarification in this matter. You state that the vessel bearing the shipment was scheduled to arrive in Baltimore on January 22, 1978, but was delayed and arrived in Norfolk on February 6, 1978. You also state that the container bearing the shipment, transported in bond, arrived in Baltimore on February 16, 1978, but was not broken down for Customs inspection and clearance until March 3, 1978.

By Executive Order 12041, dated February 25, 1978 (copy enclosed), clams from the Republic of Korea were excluded from eligibility under GSP. Section 5 of that order specifically states that the amendments made thereby shall be effective with respect to articles that are both: (1) Imported on or after January 1, 1976; and (2) entered, or withdrawn from warehouse, for consumption on or after March 1, 1978. Of course, the date of importation by the vessel is not necessarily the date of entry for consumption of the merchandise on that vessel.

We believe that Customs at Baltimore was correct in citing section 141.68(a) of the Customs Regulations in this situation. In addition, under section 141.63 of the Customs Regulations, entry could have been made after the merchandise arrived within the port limits.

Since a consumption entry for the merchandise was filed after the effective date of its removal from GSP eligibility, we conclude that Customs at Baltimore was correct in denying it duty-free treatment under GSP.

(C.S.D. 79–193)

Valuation: Merchandise for Which "Check Prices" Are Established by Foreign Government; Rebates

Date: October 2, 1978
File: R:CV:V
541787 SG

Your communication dated April 28, 1978, in which you request advice as to the proper valuation of a proposed transaction involving the importation of pillow blocks, flange units, and ball bearings from Japan, was referred to our office for response.

You indicate that the merchandise sold to your company is the subject of "check prices" established by (A, a Japanese Government agency) and that all invoices for products sold to you will contain the prices established by A unless the sales price is higher than that price. You have agreed to pay the A prices by letter of credit, and will have the amount equal to the difference between the agreed price on the price list and the A price, if any, remitted to you. You indicate

your belief that the agreed prices as stated on the attached price list are the proper appraised values of the products you plan to import. You also indicate your belief that the proper basis for the appraisement of this merchandise is the cost of production, as represented by the agreed price.

The merchandise in question appears on the "final list" compiled by the Department of the Treasury, T.D. 54521, therefore appraisement is under section 402a of the Tariff Act of 1930, as amended (copy enclosed).

To qualify for appraisement under section 402a(d) the merchandise must either be freely sold or offered for sale * * * at a price which fully reflects the market value of the merchandise. Insofar as sales from (company X) are concerned the materials submitted seem to reflect that the sales price in this case is negotiated on a case-by-case basis between X and the importer, and that there is no single price at which the merchandise being imported is sold or freely offered for sale. Accordingly, the prices contained on the materials submitted do not represent freely offered prices and may not be utilized as a basis for purposes of determining export value. You indicate that there is no home market for these products, therefore appraisement on the basis of foreign value is precluded. It appears that U.S. value, section 402a(e) is not the proper basis of appraisement as no evidence has been submitted to indicate the price at which such or similar merchandise is freely offered for sale for domestic consumption.

As none of the foregoing bases of valuation appears to be appropriate appraisement would be made on the basis of cost of production, section 402a(f). In determining the statutory cost of production, it is not the manufacturer's actual cost, but the actual cost of manufacture that we must ascertain. *Ford Motor Company* v. *United States*, Cust. Ct. 553, ARD 9 (1952): *Goodrich-Gulf Chemicals, Inc.*, v. *United States*, 66 Cust. Ct. 509, RD 11733 (1971). The actual cost of manufacture includes the cost of materials and fabrication, usual general expense, cost of containers and coverings and an addition for profit.

We note, that in the *United States* v. *Continental Forwarding Co., Inc., et al.*, CAD 1063 (1972) the United States Court of Customs and Patent Appeals held that sales at less than the minimum "check prices" established by A were in the ordinary course of trade. Accordingly, when it is ascertained that an existing minimum "check price" is routinely disregarded by the export trade so that sales at less than the "check price" are, in fact, sales made in the ordinary course of trade, the actual freely offered price, without regard to the "check price," will be used as the basis for appraisement in determining export value.

We agree that where there is an established procedure for rebates, the net or agreed price, rather than the "check price," is the proper appraised value if it meets the other requirements of export value. However, this does not appear to be the case here.

(C.S.D. 79–194)

Vessel Repair: Addition of New Bow and Stern to Existing Midbody

Date: October 2, 1978
File: VES–13–18–R:CD:C
103596 JM

This ruling concerns the dutiability under 19 U.S.C. 1466 of certain work performed in a foreign shipyard.

Issue.—Does the addition of a new bow and stern to an old midbody and refurbishing the old midbody in a foreign shipyard constitute dutiable repairs under 19 U.S.C. 1466?

Facts.—The (vessel No. 1) was constructed in 1962; the vessel was sold by (company A) to (company B) in 1977; the vessel's document was surrendered; the bow and stern were removed and scrapped; the midbody was used in construction of the (vessel No. 2) for (company A) and a new official number was issued to the resulting vessel by the U.S. Coast Guard.

Law and analysis.—The U.S. Coast Guard has held that the described work constituted a rebuilding so that the returning vessel (vessel No. 2) is not the same vessel as the (vessel No. 1) (which was documented under the laws of the United States to engage in the foreign or coasting trade). The (vessel No. 2) was not so documented at the time it was constructed (see 19 U.S.C. 1466). Further, Coast Guard's letter of circa June 1, 1978 to (person's name) of the (company A) describes the work done in Japan and concluded that the "vessels will have been completely taken up refit and reset as a result of the shipbuilding work accomplished * * *" and that "the vessels will have all the attributes and will be newly constructed ships for documentation purposes." We must therefore conclude that the (vessel No. 2) exists as a result of the work performed in the Japanese shipyards and was not a vessel at the time the work was performed. It follows that the work was not a dutiable vessel repair. Since the statute merely places a duty on repairs to vessels, we are without authority to assess a duty on the building (rebuilding) of a new vessel. Vessels themselves (except pleasure craft) are not subject to the Tariff Schedules of the United States pursuant to general headnote 5(e) thereof.

Holding.—The midbody of the (vessel No. 1) had ceased to be a vessel at the time it was used in the construction of the (vessel No. 2). Under the circumstances (vessel No. 2) was a new vessel arriving in the United States for the first time and as such not subject to duty under the provisions of 19 U.S.C. 1466.

(C.S.D. 79–195)

Seizure: Release of Customs-Seized Vehicles to Drug Enforcement Administration for Subsequent Return to Mexican Authorities

Date: October 3, 1978
File: ENF 4–02.1 R:E:M
608777 A

To: Regional Commissioner of Customs, Los Angeles, Calif.
From: Assistant Commissioner, Regulations and Rulings.
Subject: Reliase of Customs-seized vehicles to DEA for use in Mexican courts ("turnback" procedure).

Your memorandum of March 8, 1978 (ENF–4:0 NDA), asks if an enforcement technique used along the Mexican border meets the test of avoiding techniques of even questionable propriety (Customs policy statement 3000–2, June 2, 1977). To accommodate the Drug Enforcement Administration (DEA) in a situation where persons subject to Mexican law are apprehended attempting to enter contraband into the United States, Customs occasionally turns over to that agency an individual, the conveyance involved (usually an automobile), and narcotics or controlled substances. This procedure is invoked at the request of the DEA for the purpose of turning back certain individuals to Mexico for prosecution there.

Title 19, United States Code, section 1595a(a) provides that conveyances used in unlawful importations "* * * shall be seized and forfeited * * *." Out of concern that this directive is mandatory, you ask whether conveyances can either not be seized, or else "unseized" similar to a U.S. attorney's decision not to prosecute an individual or a forfeiture. Another possibility mentioned is to exercise discretionary authority (under 19 U.S.C. 1618) by remitting forfeiture of the vehicle on condition that it be immediately exported under Customs supervision. The alternatives discussed are within the context of a DEA-Customs agreement providing that "the violator, the contraband, and all related evidence will be turned over to DEA for prosecution."

It appears that Customs may legally waive a seizure under 19 U.S.C. 1595(a) and turn it over to DEA. The case reported as *General Motors Acceptance Corp.* v. *U.S.* (1932), 52 S. Ct. 468, 286 U.S. 49, involved the predecessor statute of section 1595a (i.e., former section 483), in a situation where both Customs laws and the National Prohibition Act were violated by the unlawful importation and transportation of liquor. The Supreme Court that the Government could elect to proceed of civil administrative penalties against persons in possession of small with seizure and forfeiture under either law. Currently, the processing amounts of marihuana, hashish, cocaine, opiates, dangerous drugs, and hallucinogens (Customs Policies and Procedure Manual Supplement 3000–5, dated May 1, 1978) reflects an implicit election of remedies by the Government.

It is our opinion that our cooperation in the "turn back" procedure is legally permissible, inasmuch as it amounts to an election to proceed under statutes enforced by DEA. It is our understanding that DEA, in cooperation with the Immigration and Naturalization Service, then returns the Mexican national, the conveyance, and all or part of the contraband, to Mexican authorities. The latter is accomplished under section 1182(a)(23) of title 8, United States Code, which establishes as one of the classes of aliens which shall be excluded from admission into the United States, any alien known to be an illicit trafficker in certain identified drugs.

Because Customs, under our agreement with DEA, turns over to DEA the violator, the contraband, and all related evidence presumably including any vehicle involved for prosecution by that agency, we believe that it is sufficient to maintain a record of the turnover on the chain of custody form. Because of the basic election to proceed under statutes other than 19 U.S.C. 1595a(a), no remission is required.

Customs will continue to prepare a seizure report, Customs form 151; however the basis for seizure will be shown as 21 U.S.C. 881 or 49 U.S.C. 781 (as appropriate), rather than 19 U.S.C. 1595a.

(C.S.D. 79–196)

Classification: Brass Rubbings

Date: October 4, 1978
File: CLA–2:R:CV:MC
059899 PG

This ruling concerns the Customs tariff classification of certain brass rubbings.

Issues.—What is the tariff classification of certain brass rubbings which are more fully described in the facts below?

Facts.—The importation of certain brass rubbings, to be shipped from Germany, is proposed. Pictorial representations of the rubbings were enclosed in the inquiry letter. These articles are produced by placing paper over ancient brass etchings found in churches in Europe and rubbing the paper against the etchings to produce images on the paper.

Law and analysis.—Item 256.90, Tariff Schedules of the United States (TSUS), includes other articles of paper, not specially provided for. If in chief value of the paper, brass rubbings are classifiable in item 256.90, TSUS.

Holding.—If in chief value of the paper, these brass rubbings are classifiable as other articles of paper, not specially provided for, in item 256.90, TSUS, and dutiable at the rate of 8½ percent ad valorem.

(C.S.D. 79–197)

Classification: Lamp Ballasts

Date: October 5, 1978
File: CLA–2:R:CV:MA
056801 SST

This is in reference to your letters of May 26, 1978, and June 26, 1978, in which you requested a tariff classification on a lamp ballast manufactured in Mexico.

The subject ballast, according to the technical literature submitted with your letters, performs two functions: It provides a starting voltage to light the lamp (a "transformer" function) and it stabilizes the operating impedance of the circuit so as to maintain a steady current once conduction has started (the "ballast" function).

Our own laboratory analysis of the sample ballast submitted indicates that the device does perform these two functions of limiting the available current as well as providing the necessary voltage. The device, therefore, is classifiable as an inductor under item 682.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 7.5 percent ad valorem.

Articles which are classifiable under article 682.60, TSUS, may be eligible for GSP treatment provided that the requirements of general headnote 3(c), TSUS, are met.

(C.S.D. 79–198)

Brokers: Issuance of Temporary Corporate Customhouse Broker's License

Date: October 17, 1978
File: BRO–1 R:E:E
305529 W

This is in further reference to your letter of February 1, 1978, requesting an amendment of the Customs Regulations to provide for a temporary corporate customhouse broker's license for use during the period in which an applicant firm's license application is pending with Customs provided the applicant has two officers who are licensed brokers within the district for which the application is submitted and an office where its Customs transactions will be performed by a licensed officer.

After full consideration of your proposal, we have concluded that it should not be implemented. We do not believe that the statute (19 U.S.C. 1641) authorizing the issuance of brokers' licenses authorizes a simple denial of an application for a license after a "temporary" license has been issued. We believe that after such a license was issued, the licensee would have full recourse to the procedures provided for in section 1641(b).

Additionally, we are not convinced that sufficient need warranting institution of a temporary licensing procedure has been demonstrated. Pending issuance of a corporate license for a certain district, the officers of an applicant who are licensed brokers in that district may transact Customs business under the authority of their individual licenses.

Further, we do not believe that we would be fully protecting importers and the revenue of the United States, factors we must consider under section 1641(d), if we implemented a proposal whereby normal investigative procedures, a part of the present licensing process, were bypassed. As you know, our investigations of corporate applicants extend far beyond examination of the records of the licensed officers of the firm. Furthermore, if the application for the permanent license was ultimately denied, serious problems could occur with respect to importers whose shipments were being handled by a firm which had been issued a temporary license.

In short, we believe that balancing the commercial benefits to the corporate license applicant against the above-mentioned problems leads to the conclusion that your proposal for temporary licensing of corporate customhouse broker applicants must be rejected.

Although we believe your proposal cannot be adopted, we do recognize the problems there may be for a corporate license applicant because of lengthy delays before action on the application. Therefore, we are forwarding copies of this reply to our Regional Commissioners and to the Assistant Commissioner, Office of Investigations, so that they can take action they deem appropriate to insure that corporate broker's license applications are processed as promptly as possible.

(C.S.D. 79–199)

Generalized System of Preferences: Inclusion of Export Packaging Costs in 35-Percent Value-Added Requirement

Date: October 19, 1978
File: R:CV:S
055147 JLV

This ruling concerns Customs determination of export packaging costs as includable costs in the 35-percent value-added criterion for the "U.S. Generalized System of Preferences."

Issue.—Are the costs of export packaging materials and packaging operations includable in the 35-percent value-added criterion for purposes of general headnote 3(c)(ii)(A), Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202)?

Facts.—Clear, float glass table tops, classifiable under item 544.18, TSUS, and eligible for treatment under the generalized system of preferences (GSP), were imported from Portugal, a beneficiary developing country (BDC) for purposes of the GSP. The glass would qualify for duty-free treatment if the export packaging costs were included in the 35-percent value-added criterion for the GSP. If the costs were excluded, the glass would not qualify and would therefore be dutiable at 7.5 percent ad valorem.

Law and analysis.—The GSP, which provides for duty-free entry of designated articles that are produced in designated beneficiary developing countries (BDC's), was established in title V of the Trade Act of 1974 (19 U.S.C. 2461–2465) and implemented by Executive Order 11888 of November 24, 1975 (40 F.R. 55275). For an article to qualify for duty-free treatment under the GSP, the sum of: (1) The cost or value of materials produced in the BDC, and (2) the direct costs of processing operations performed in such BDC must be equal to or greater than 35 percent of the appraised value of the article. Neither the statutory language nor the legislative history on the law elaborates on the term "direct costs of processing operations."

The Customs Regulations in section 10.178 (19 CFR 10.178) identify certain costs that are includable as direct costs of processing operations but do not limit such costs to those identified. Packaging costs, although not specifically identified in section 10.178, are not therefore automatically excluded as direct costs of processing operations for purposes of the 35-percent value-added requirement.

Congress, by using the term "direct costs of processing operations," appears to have meant to exclude costs which were either indirect or not part of the actual processing operation. These costs, although excluded, may very well be dutiable costs under Customs value law. Therefore, we cannot logically argue that, because the costs of packaging or placing merchandise in condition for shipment to the United States are dutiable costs, the packaging costs are includable within the 35-percent value-added requirement.

The underlying question that must be answered is whether packaging, specifically packaging for export, is part of the processing operation for purposes of the GSP. In headquarters ruling dated February 3, 1977 (file 047532), Customs held that packaging processing and material costs may be included within the 35-percent value-added test for GSP, provided they represent the costs of nonreusable shipping containers and containers of the types usually sold at retail with their contents as contemplated in general headnote 6(b)(i), TSUS (19 U.S.C. 1202). It was also noted that the cost of packaging materials which are not the product of the BDC must be excluded unless they have undergone a substantial transformation. In that ruling, reference was made to three packaging stages: Individual packaging of the article; packaging of the individual units in master cartons; and packaging of the master cartons in cartons suitable for shipping.

Customs is of the opinion that packaging performed in a BDC and essential for the shipment of an eligible article to the United States is a cost or value includable in the 35-percent value-added test under the GSP. This value includes the cost of packaging operations and the cost or value of materials which are produced in the BDC and are nonreusable shipping containers as contemplated by general headnote 6(b)(i), TSUS. Therefore, export packaging costs are includable costs under sections 10.177(a) and 10.178(a) of the Customs Regulations.

Holding.—The costs of packaging operations and materials necessary to place articles in condition for export are includable in the 35-percent value-added test under the GSP if the operations are performed in the BDC and if the materials are produced in the BDC and constitute nonreusable containers under general headnote 6(b)(i), TSUS.

(C.S.D. 79-200)

Duty Assessment: Entry of Gloves Previously Exported and Advanced in Value Abroad

Date: October 19, 1978
File: DRA-1-09:R:CD:D
209439 B

To: Area Director, New York Seaport.

From: Director, Carriers, Drawback and Bonds Division.

Subject: Item 804.20, TSUS—Headquarters ruling CLA-2-R:CV:MA of August 8, 1978[1] —Memorandum CLA-2-S:C:D6/TIM/201 of August 30, 1978, from Chief, Duty Assessment Branch 6/8, New York Seaport.

In the referenced headquarters ruling, we held that certain gloves, exported with benefit of drawback to the Philippines where vinyl palms and backs were attached, could be returned to the United States and entered under item 804.20, TSUS, dutiable only to the extent of the drawback obtained on the gloves.

This portion of our ruling was in error. The superior heading for items 804.10 and 804.20, TSUS, states: "Articles previously exported from the United States which—except for headnote 1 of this subpart—*would qualify for free entry under one of the foregoing items* and are not otherwise free of duty." [Italic added.]

The phrase "foregoing items" refers to items 800.00, 801.00, 801.10, TSUS, each which provides in part that the articles being returned to the United States have not been advanced in value or improved in condition while abroad; and items 802.10 through 802.40, TSUS, which provide for the free return of articles exported for exhibition purposes and horses exported for racing.

Headnote 1(a) of part 1, subpart A, schedule 8, TSUS, provides: "The items in this subpart (except items 804.10 and 804.20) shall not apply to any article exported with benefit of drawback. The superior heading to items 804.10 and 804.20, TSUS, quoted above, specifically provides in effect that those two item numbers are applicable to merchandise only if they would qualify for free entry under a provision of that subpart were it not for having been exported with benefit of drawback. Clearly, these gloves have been advanced in value while abroad; therefore, disregarding the drawback aspect, had these gloves been exported from the United States for attachment of the palms and

[1] Not published in Customs Bulletin.

backs, they would not have been eligible for free entry under any tariff provision in subpart A, part 1, of schedule 8, TSUS.

Please proceed accordingly and inform the company to which our August 8, 1978, ruling was sent of this modification thereof.

(C.S.D. 79-201)

Transportation in Bond: Entry of Merchandise for Transiting the United States

Date: October 19, 1978
File: BON-2-01-R:CD:D
209361 B

This ruling concerns Customs procedures for entering goods for transiting the United States.

Issue.—May goods purchased in Mexico enter the United States for transportation and entry into Canada?

Facts.—Certain handmade ceramic goods and furniture were purchased in Mexico. The purchaser wishes to transport these goods from Mexico through the United States to his place of business in Canada.

Law and analysis.—Under the provisions of section 18.1(a)(1), Customs Regulations (19 CFR 18.1(a)(1)), merchandise to be transported from one port to another in the United States in bond shall be delivered to a common carrier, contract carrier, freight forwarder, or private carrier bonded for that purpose. Pursuant to section 18.1(a)(1) of the regulations, the actual transportation or movement must normally be made under the bond of a common carrier, contract carrier, or freight forwarder. Even if the applicant could be designated a private bonded carrier, the movement which he contemplates could not be made under his own bond as that movement would be restricted by section 112.11(a)(4) of the regulations. However, if a bonded carrier, contract carrier, or freight forwarder files the entry under the carrier's bond and permits the applicant to operate under the carrier's bond, the movement or transportation contemplated could be accomplished in this manner. In these instances, the common carrier, contract carrier, or freight forwarder would be liable for any shortages or misdelivery of the merchandise under the carrier's bond, in accordance with section 18.8(a) of the regulations.

Holding.—Upon arrival from Mexico, the applicant should enter his merchandise for transportation and exportation on Customs form 7512. Thereafter, either on his own or, if he desires, with the aid of a customhouse broker, he should obtain the services of a bonded carrier who will allow the applicant to transport his merchandise in his own

vehicle under the bond and risk of the bonded carrier. The fee for this service is a matter between the applicant and the bonded carrier.

(C.S.D. 79–202)

Temporary Importation Under Bond: CET Ester To Be Manufactured Into CET Alcohol Hydrochloride

Date: October 19, 1978
File: CON–9–04–R:CD:D
209333 L

Issue.—Does CET alcohol hydrochloride manufactured or produced from imported CET ester constitute alcohol as that term is used in headnote 2(a)(i), schedule 8, part 5, subpart C, Tariff Schedules of the United States (TSUS)?

Facts.—A domestic company imports CET ester under item 864.05, Tariff Schedules of the United States (TSUS), temporarily free of duty under bond. The CET ester is manufactured into CET alcohol hydrochloride, a pharmaceutical ingredient. The finished product, CET alcohol hydrochloride, is said to be a true alcohol.

Law and analysis.—Headnote 2(a)(i), schedule 8, part 5, subpart C, TSUS, provides that:

> Merchandise may be admitted into the United States under item 864.05 only on condition that—(a) such merchandise will not be processed into an article manufactured or produced in the United States if such article is—(i) alcohol, distilled spirits, wine, beer, or any dilution or mixture of any or all of the foregoing.

This headnote is the successor provision to subdivision (1) of section 308 of the Tariff Act of 1930, as amended (19 U.S.C. 1308(1)). Subdivision (1) of section 308 was amended by Public Law 85–414, approved May 16, 1958 (T.D. 54601), to include the above-cited language. The legislative history of Public Law 85–414 (S. Rept. 1485, 85th Cong.) offers no comment on the meaning of alcohol as used in subdivision (1), section 308, Tariff Act of 1930, as amended. Examination of pertinent Customs Service files disclose no rulings with respect to the meaning of alcohol as that term is used in subdivision (1), section 308, Tariff Act of 1930, as amended, or headnote 2(a)(i), schedule 8, part 5, subpart C, TSUS.

Interpretation of statutes is based upon good faith and good sense. While technical terms are generally intended to have their technical meaning, the subject matter and nature of the context must be consulted in order to arrive at the meaning intended to be conveyed.

The headnote prohibits admission into the United States under item 864.05, TSUS, of merchandise to be processed into "alcohol, distilled spirits, wine, beer, or any dilution or mixture of any or all of the foregoing." Technically, alcohol covers a wide range of organic compounds derived from a hydrocarbon by substituting a hydroxyl group in place of one or more of the hydrogen atoms. However, taken in context, it is our view that the term alcohol, as used in headnote 2(a)(i), schedule 8, part 5, subpart C, TSUS, refers to ethyl alcohol (or ethanol) which is potable and is intended to be used for beverage purposes. This interpretation is based upon the language of headnote 2(a)(i) which refers to, in addition to alcohol, "distilled spirits, wine, beer, or any dilution or mixture of any or all of the foregoing." This description suggests that it was the clear intent of Congress that alcohol, as used in the headnote, mean potable ethyl alcohol intended for beverage purposes.

Holding.—CET alcohol hydrochloride manufactured or produced from imported CET ester, if not potable ethyl alcohol intended for beverage purposes, is not the type of alcohol manufactured or produced in the United States that is proscribed by headnote 2(a)(i), schedule 8, part 5, subpart C, TSUS.

(C.S.D. 79-203)

Bonds: Use of Facsimile Signature and Seal by Surety

Date: October 20, 1978
File: BON-3-R:CD:D
209452 L

Issue.—Can a surety execute a Customs bond by means of a facsimile signature and a facsimile seal.

Facts.—The board of directors of a corporate surety has resolved that the signature of the chairman of the board, president, secretary, assistant secretary, and treasurer may be affixed to any power of attorney or certificate or bond or undertaking and any such power of attorney or certificate or bond or undertaking bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company; and that the signature of such officers and the seal of the company may be affixed to any bond or undertaking relating thereto by facsimile; and any bond or undertaking bearing such facsimile signatures or facsimile seal affixed in the ordinary course of business shall be valid and binding upon the company as if each seal and signature were manually and individually applied by individuals authorized to

execute bonds for the company. The surety has submitted a certified copy of the corporate resolution agreeing to be bound by facsimile signatures and seals and sample signatures of the individuals authorized to execute bonds for the company, as well as a sample of the corporate seal. The surety further asks that the use of facsimile seals and signatures be without prejudice to its right to affix seals and signatures manually.

Law and analysis.—Section 113.37(d), Customs Regulations (19 CFR 113.37(d)), requires that a bond executed by a corporate surety must be signed by an authorized officer or attorney of the corporation and have the corporate seal affixed to the bond next to that signature. Section 113.24, Customs Regulations (19 CFR 113.24), requires, subject to certain provisions, that bonds shall be under seal.

Section 1–201(39) of the Uniform Commercial Code defines "signed" to include any symbol executed or adopted by a party with present intention to authenticate a writing. The official comment to that section states in part:

> The inclusion of authentication in the definition of "signed" is to make clear that as the term is used in this act a complete signature is not necessary. Authentication may be printed, stamped, or written * * * The question always is whether the symbol was executed or adopted by a party with present intention to authenticate the writing.

Article 1 of the Uniform Commercial Code has been adopted by all of the States, the District of Columbia, and the U.S. Virgin Islands.

The general rule is stated in 80 C.J.S. (Signatures), section 7:

> In absence of a statute otherwise providing, it may be printed, stamped, typewritten, engraved, photographed or cut from one instrument and attached to another. A signature lithographed on an instrument by a party may be sufficient for the purpose of signing it.

Accordingly, since the relevant provisions of the regulations, 19 CFR 113.24 and 19 CFR 113.37(d), do not prescribe a specific method of affixing a signature or a seal, it would appear that a facsimile signature and seal are not prohibited.

Where a corporate surety provides an appropriate resolution showing a clear intent to be bound by a facsimile signature and facsimile seal in the same manner as one that is manually affixed by an authorized officer or agent, there is no reason to deny the use of facsimile signatures and seals on Customs bonds.

Holding.—A facsimile signature of an authorized officer or agent of a corporate surety and a facsimile seal of a corporate surety satisfies the requirement for a signature and corporate seal on a Customs bond

as provided in 19 CFR 113.24 and 19 CFR 113.27(d). The surety must provide headquarters, U.S. Customs Service, with a copy of each signature that is to be used and a copy of the corporate seal, together with a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and facsimile seal. The use of facsimile signatures and seals is without prejudice to the surety's right to affix signatures and seals manually.

(C.S.D.) 79–204

Foreign Trade Zones: Admission of Merchandise From Customs-Bonded Warehouse

Date: October 20, 1978
File: FOR–1–R:CD:D
209360 WR

This ruling concerns the admission of merchandise into a foreign-trade zone from a Customs-bonded warehouse.

Issue.—Whether merchandise withdrawn from a bonded warehouse may receive other than zone-restricted status on admission to a foreign-trade zone.

Facts.—Because of the delayed opening of a foreign-trade zone the intended zone customers placed their merchandise in Customs-bonded warehouses. After the zone opens, the zone customers intend to withdraw their merchandise from the bonded warehouses and then admit that merchandise into the zone. The zone operator requests that the withdrawn merchandise be given nonprivileged foreign status on admission into the zone. The zone operator has made the request on a one-time basis.

Law and analysis.—Under 19 U.S.C. 1557, as amended by Public Law 95–410 enacted October 3, 1978 (92 Stat. 888) merchandise entered for warehouse may be withdrawn, within 5 years from the date of importation, for consumption, for exportation, for transportation and exportation, for shipment to certain specified possessions of the United States, or for rewarehousing at another bonded warehouse.

Section 146.48 of the Customs Regulations (19 CFR 146.48) provides that nonprivileged foreign merchandise in a foreign-trade zone may be entered for warehousing on withdrawal from the zone. Imported merchandise is allowed to remain in a foreign-trade zone for an indefinite period of time.

The legislative history of the fourth proviso to section 3 of the Foreign-Trade Zones Act (19 U.S.C. 81c) as shown in Senate Report

No. 1107 (1950 U.S. Code Congressional and Administrative News, p. 2537) indicates that Congress intended to coordinate the operations of bonded warehouses with those of foreign-trade zones. Under the fourth proviso imported merchandise which had been stored in a bonded warehouse for almost the full statutory 5-year period could be transferred to a zone pending actual exportation. Moreover, transfer to a zone enables an importer to end the bond liability to export or enter warehoused merchandise within the 5-year period.

It has been a long-standing policy to enforce an absolute time limit on the storage of merchandise in a bonded warehouse *U.S.* v. *De Visser*, 19 F. 642 (S.D. N.Y. 1882). If previously warehoused merchandise were admitted to a zone as nonprivileged foreign merchandise that policy, established by statute, would be frustrated.

In any event, the Customs Service lacks authority to waive the express withdrawal provisions established in 19 U.S.C. 1557, as amended.

Holding.—The Customs Service cannot approve a request to permit merchandise in a bonded warehouse to be withdrawn from that warehouse for admission to a foreign-trade zone as nonprivileged foreign merchandise.

(C.S.D. 79–205)

Marking: Country of Origin; Interlocking Concrete Pavestones

Date: October 23, 1978
File: MAR–2–05–R:E:R
709337 JB

This ruling concerns the country-of-foreign-origin marking of concrete interlocking pavestones for use in sidewalks, driveways, patios, parking areas, and courtyards shipped on strapped skids or pallets and imported into the United States for wholesale distribution.

Issue.—May the strapping used to secure the pavestones be considered a container for purposes of excepting the articles from origin marking provided the strapping is conspicuously and legibly marked and the pavestones will reach the ultimate purchaser in the United States in the original marked container?

Facts.—The interlocking concrete pavestones imported from Canada are made from high-strength concrete without surface coating; colors are added during the manufacturing process. The articles are cubed, placed on skids or pallets, and secured by metal strapping.

Law and analysis.—Pursuant to 19 U.S.C. 1304, imported concrete pavestones must be individually marked to indicate the country of

origin to the ultimate purchaser by such means as a rubber stamp, stencil, or other means which will insure a legible and conspicuous marking. Marking the English word "Canada" to one surface of each pavestone is acceptable.

However, in the case of concrete pavestones imported in cubes and secured with metal strapping, the strapping is considered to be a "container" for purposes of the marking statute, 19 U.S.C. 1304. Accordingly, the pavestones may be excepted from individual marking to indicate the country of origin pursuant to 19 U.S.C. 1304(a)(3)(D), provided the containers are legibly and conspicuously marked to indicate the country of origin if Customs officers at ports of entry are satisfied that the pavestones will reach the ultimate purchaser, e.g., a construction company, in the United States in the original containers after sale by the U.S. supplier.

Holding.—Metal strapping for cubed pavestones imported into the United States are containers for purposes of the country-of-origin marking statute, 19 U.S.C. 1304, and the individual pavestones may be execepted from origin marking if the strapping is legibly and conspicously marked to indicate foreign origin (19 U.S.C. 1304(a)(3)(D)) to the ultimate purchaser. If, however, a significant proportion of the cubes would be broken by building supply companies or wholesalers and the pavestones sold in smaller quantities to various purchasers, the exception would not be applicable.

(C.S.D. 79-206)

Marking: Country of Origin; Steel Coils Manufactured in Japan and Processed in Canada

Date: October 23, 1978
File: MAR-2-05-R:E:R
707810 JB

This ruling concerns the country of origin for marking purposes (19 U.S.C. 1304) of steel coils manufactured in Japan which are slit in width or flattened and slit into plates or sheets in Canada before importation into the United States.

Issue.—Is Japan or Canada the country of origin for country-of-origin marking purposes?

Facts.—The manufacturer in Japan exports steel coils in 48-inch widths to a company in Canada which processes the coils by: (1) Slitting the coils to form either 12-inch or 2-inch coils; or (2) flattening the coils and slitting the plates or sheets into 10 feet by 48-inch dimen-

sions. The coils or sheets are then shipped to the United States from Canada.

Law and analysis.—The process of slitting or flattening the coils into narrower lengths or into steel sheets in Canada does not effect a substantial transformation of the product into new and different articles to render Canada as the country of origin of the final product within the meaning of 19 CFR 134.1(b).

The steel coils and sheets, however, are excepted from individual marking to indicate the country of origin when imported into the United States pursuant to the exception under 19 U.S.C. 1304(a)(3)(J) for "Metal Bars, except concrete reinforcement bars; billets; blocks; blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms." If the steel coils or sheets are imported in containers, the containers are required to indicate Japan as the country of origin. Metal straps or wire around bundles are considered to be containers for origin-marking purposes.

Holding.—The cutting or flattening of steel coils in a foreign country other than the foreign country of manufacture into different widths and lengths does not effect a substantial transformation of the product to render the foreign country where the further work is added as the country of origin within the meaning of 19 CFR 134.1. Accordingly, Japan is the country of origin for the steel coil or sheets when the final product is imported into the United States from Canada for for purposes of 19 U.S.C. 1304.

Effect on other rulings.—This ruling does not affect the country of exportation of the steel for appraisement purposes.

(C.S.D. 79–207)

Value: Export Value; "Such or Similar Merchandise"; Radios Sold, With and Without Warranties

Date: October 23, 1978
File: R:CV:V
541667 BS

This is in reply to your letter of October 11, 1977, and subsequent correspondence, requesting a ruling with respect to the proper appraised value to be utilized under the circumstances set forth below. The merchandise, consisting of clock radios imported from Taiwan, is not on the final list, T.D. 54521.

The importer, (company A), has placed an order with its buying agent, (company B), for the purchase of 300,000 AM–FM digital clock radios from (company C). (Confidential material deleted.)

Although the written agreement between A and C included a 90-day warranty on all of the radios, subject to certain conditions to be performed by A, 6.5 percent was deducted from a preagreed price of $10.60 f.o.b. to cover service charges by (company D), a U.S. company, for the repair of up to 7 percent of the radios under the purchase order. Any defective radios in excess of 7 percent of those manufactured is the responsibility of C to repair or replace. A is to refund the balance of the 6.5-percent charge to C proportionate to the number of defective radios which D services which are less than 7 percent of the number manufactured. The reason for the agreement with this independent company is because C does not have service centers in the United States, and A would find it incovenient to ship defective radios back to Taiwan for servicing.

The agreement between A and D provides in part for the repair of radios after the warranty period, and also provides for the payment by A of $600 a month to a maximum of $6,000 towards the maintenance of a D inspector in Taiwan.

It is your position that the dutiable value of the merchandise should be $9.91, the amount set forth in the purchase order to B, an amount which excludes the commission of 20 cents to be paid to B. This price is in effect a price excluding a warranty of repair as to any defective radios up to 7 percent (the industry average) of the total purchased. You believe that this price is a "freely offered price" within the meaning of section 402(f), Tariff Act of 1930, as amended, and that accordingly it should be used to establish export value, section 402(b) of that act. It is also your opinion that the additional costs incurred by A, i.e., servicing performed by D and inspection costs in Taiwan by the D inspector, are not properly part of dutiable value since these costs do not inure to the benefit of the manufacturer, but rather are part of the inspection or quality control maintained separately by A for its own account.

You also state that if A is required to pay an additional sum to C based on a defective rate of under 7 percent, after importation and after the 90-day warranty period has expired, A will undertake to advise Customs accordingly and will tender the appropriate duty. However, in view of the speculative nature of this payment, it is your view that no part of this 6.5 percent "bonus" can form part of the entered value of the merchandise.

Section 402(b) provides, in pertinent part, that the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which *such or similar merchandise is freely sold or, in the absence of sales, offered for sale* in the principal markets of the country of expor-

tation, in the usual wholesale quantities and in the *ordinary course of trade*, for exportation to the United States * * *. [Italic supplied.]

It is contended that although the supplier offers for sale and has sold to others than A for export to the United States physically identical merchandise, that other merchandise is not "such or similar" to the subject radios for the reason that a factory warranty is provided for these radios while in the subject sale no factory warranty is provided (for up to 7 percent of the merchandise).

If the merchandise sold with the warranty is "such or similar" to the subject merchandise, then the price paid for that "such or similar" merchandise may be used to establish an export value, assuming the other statutory criteria are satisfied. On the other hand, if found to be dissimilar, then only the price paid for the subject radios would be considered in determining whether a statutory export value exists (assuming there are no other sales or offers for sale or warrantless clock radios). The meaning of the phrase "such or similar" has been the subject of much judicial interpretation and a review of the same is in order.

In *United States* v. *Irvin Massin & Bros.*, 16 Ct. Cust. Appls. 19, T.D. 42714, the court held that "* * * if goods are made of approximately the same materials, are *commercially interchangeable* (italic added), are adapted to substantially the same uses, and are so used, ordinarily they are similar, within the meaning of section 402(b), Tariff Act of 1922." In *United States* v. *Wecker & Co.*, 16 CCPA 220, T.D. 42837 (1928), the court stated that "* * * the question of similarity is in each case, to be measured by much the same homely rule that applies to the prospective customer who enters a store seeking a utilitarian article of a certain specified name and style, he finds the article required is not in stock but that another article, of approximately the same price and which will perform the same function, is capable of the same use and may be substituted therefor, is available." In *E. J. Brach & Sons* v. *United States*, R.D. 11721, 65 Cust. Ct. 718 (1970), the court applied the "commercial interchangeability" rule to metal-covered paper utilized in wrapping candy. It held that for purposes of determining a foreign value (under the old value law), the fact that the merchandise for sale in the home market contained the name of a manufacturer in the foreign country different from the name of the importer did not amount to a lack of similarity that would prevent it from being commercially interchangeable.

The test of "commercial interchangeability," therefore, is essentially one of comparable use of the article in question. Although you cite the case of *F & D Trading Corporation* v. *United States*, 64 Cust. Ct. 810, A.R.D. 268 (1970), in support of your claim that nonwarranted articles

may be dissimilar from physically identical warranted articles, we believe the statement of the court in that case is particularly revealing of the judicial attitude toward this rather "grey" area.

In that case, the articles in question were new Volkswagen automobiles that had been sold outside of the usual franchise system and as a result did not carry the manufacturer's warranty. These Volkswagens had heretofore been appraised under export value and as second-hand vehicles, while the franchise system Volkswagens had been appraised as vehicles on the basis of cost of production.

The court in *F & D* held that the subject vehicles were not second-hand and that export value could not be utilized since they were not sold in the ordinary course of trade. In the course of its opinion, the court did refer to the manufacturer's warranty as a "valuable commodity." However, notwithstanding this language which might have distinguished the vehicles in the eyes of the court (for purposes of the statute), if thereafter went on to say that " * * * the imported automobiles are either *such* as or *similar* to those produced by Volkswagen Werke and then modified by the exporter. (See p. 823.) Consequently, since the Americanized Volkswagens produced by Volkswagen Werke are appraised on the basis of cost of production * * * we see no reason why the * * * Volkswagens at bar should not also be appraised in like manner—the imported vehicles being under the circumstances disclosed in this record, at least *such as* or at least *similar* to the German manufacturer's version of Americanized Volkswagens." (In this regard, we note that under section 402a(f) of the act, the cost of production of imported merchandise is the sum of the cost of materials and of fabrication * * * employed in manufacturing or producing *such or similar* merchandise, * * * .) [Italic added.]

Thus, while characterizing a factory warranty as a "valuable commodity," the court nevertheless found that the vehicle without the warranty was "such or similar" to the vehicle with such warranty, and that both vehicles should be similarly appraised. We believe implicit in the court's decision, although not explicitly mentioned, was the doctrine of commercial interchangeability.

It is our opinion that the principle in *F & D Trading* is equally applicable in the instant case, and that accordingly the lack of a factory warranty does not by itself render merchandise dissimilar from merchandise with such warranty for purposes of determining a statutory export value.

The question now at issue is whether a statutory export value for the merchandise may be found in the form of the price of the clock radio with the warranty, or the price without the warranty. Such price must represent a price at which the merchandise is freely sold or

offered for sale to all purchasers at wholesale in the ordinary course of trade, for exportation to the United States.

C states that it has offered for sale and has sold to others than A for exportation to the United States such or similar merchandise (with the warranty) and that it is *willing to sell* [italic added] such radios for exportation to the United States under conditions similar to those agreed upon with A. That is, the purchaser will make its own agreement for the repair of any defective merchandise.

It is apparent from C's statement that this was the only sale it has made of this merchandise for exportation to the United States without the warranty. Although a single sale may be sufficient to establish a statutory export value, in this case C states that it offers for sale and has sold such or similar merchandise for exportation to the United States with the warranty (at the higher price). Further, although C may be "willing" to sell to other U.S. purchasers at wholesale under the same terms as the sale to A, this willingness is insufficient evidence to establish a freely offered price.

Thus, in *Transatlantic Shipping Co., Inc.* (*Absorbo Beer Pad Co., Inc.*) v. *United States*, 28 CCPA 19 (CAD 118 (1940)), the court held that a mere "willingness" to sell at the claimed price, unaccompanied by price lists or evidence of overt communications with prospective customers, is not substantial or competent evidence that would establish export value.

Therefore, it would appear that a statutory export value in this case is represented by the price of the merchandise sold with the factory warranty, and not the price of the subject articles, since the price of the warranted merchandise appears to represent a freely offered price.

In addition, the unwarranted merchandise may not have been sold in the "ordinary course of trade." This phrase refers to the conditions and practices which are normal and usual in the trade under consideration, in the country of exportation, with respect to merchandise of the same class or kind as that undergoing appraisement. What is normal in the trade is a question of fact to be deduced by satisfactory evidence.

There is no evidence reflecting whether such or similar merchandise has been sold in the trade under terms similar to those agreed to by the involved parties. Accordingly, we can make no determination whether such sale was made in the "ordinary course of trade." However, if the sale was found to be out of the ordinary course of trade, then for a second reason the price of this merchandise could not be used to establish an export value, and sales of such or similar merchandise would be considered. If for whatever reason an export value could not be found for such or similar merchandise, then we would look to U.S.

value, section 402(c) of the act. Only if an export value and a U.S. value cannot be determined would we then turn to constructed value, section 402(d) of the act, as the basis of appraisement.

With regard to the inspection costs, we agree that they would not be dutiable in any event since it is apparent that such costs are not a necessary incident to the production or perfection of the manufactured product (see *Goodrich-Gulf Chemicals, Inc.* v. *United States*, R.D. 11733 (1971)). Further such or similar merchandise is freely sold or offered without such inspection. In addition, the speculative payments to C if less than 7 percent of the merchandise proved defective, would not be relevant assuming the price of such or similar merchandise is used to determine export value. However, the district director should be advised of the possibility of such payments upon entry of the merchandise and should be further advised when and if such additional payments occur.

(C.S.D. 79–208)

Entry: Whether Residual Fuel Oil Remaining on Carrier After Unloading Is Subject to Entry and Payment of Duty

Date: October 23, 1978
File: ENT–1–01–R:E:E
306557 M

This ruling concerns the necessity for a consumption entry and the payment of duties on merchandise remaining on board the carrier after the release of such merchandise from Customs under the immediate delivery procedure.

Issue.—Is a consumption entry and deposit of estimated duties required with respect to that portion of residual fuel imported by a unit train from Canada which remains on the train and is returned to Canada?

Facts.—An American company imports residual fuel oil for its own use from a Canadian company. The merchandise is transported by means of a specially designated unit "tank train." Because of the construction of each tank car, a residue of the residual fuel oil referred to as "tank bottom residuum" remains on the bottom of each tank car after the unloading of each tank car. The carrier prepares a report entitled "Tank Car Loading Summary" which shows the total gross gallons pumped into each tank car. The merchandise is released from Customs on the basis of the amounts shown on the carrier's report. The American company alters the amount shown on

the carrier's report to reflect the actual amount unloaded from each tank car and pays the Canadian company on the basis of the altered figure. However, Customs at the port of entry has been requiring the American company to file a consumption entry and pay duty for the total amount of merchandise authorized by Customs for delivery by the carrier to him, even though a portion of that amount was not delivered to him by the carrier, but instead remained with the carrier and was subsequently returned to Canada.

Law and analysis.—Under the special permit for immediate delivery set forth in part 142 of the Customs Regulations, Customs may authorize the carrier to deliver the merchandise to the importer for subsequent entry. Even though the merchandise has been released to the carrier for delivery to the importer, the merchandise still remains in the custody of the carrier under his carrier bond, until the merchandise has been actually delivered to the importer and "permitted" in accordance with section 158.1 of the Customs Regulations. In this case, since all the parties involved agree that a lesser quantity was delivered to the American company than the quantity which Customs authorized the carrier to deliver to the American company, that company should file a consumption entry for the actual amount delivered to it by the carrier. The carrier should file on Customs form 7512 either an exportation entry or a transportation and exportation entry in accordance wlth either sections 18.25 or 18.26 of the Customs Regulations for the portion remaining on board the train which will subsequently be returned to Canada.

Holding.—The importer (the American company) is not required to state on the consumption entry or pay duty on the quantity of residual fuel remaining on board the carrier and returned to Canada. The importer is only required to file a consumption entry and pay estimated duties on that quantity actually delivered to it by the carrier and "permitted" in accordance with section 158.1 of the Customs Regulations.

(C.S.D. 79–209)

Copyright Restrictions: "Manufacturing Clause"; Book Printed in Japan

Date: October 24, 1978
File: CPR–3:R:E:R
709477 JLR

This ruling concerns the restrictions and prohibitions of the 1976 U.S. Copyright Law applicable to the importation of 5,000 copies

of a literary work, printed in Japan, entitled "Art Of The Huichol Indians."

Issue.—Whether the importation into the United States of the literary work, "Art Of The Huichol Indians," is restricted or prohibited by the "Manufacturing Clause" of the 1976 U.S. Copyright Law (17 U.S.C. 601).

Facts.—(Name), a wholly owned subsidiary of the Times Mirror Co., is seeking to import into the United States, through the port of Oakland, 5,000 copies of a book entitled, "Art Of The Huichol Indians," an English-language collective work, copyrighted in the name of the Fine Arts Museum of San Francisco.

The subject publication was printed and soft-bound in Japan. It consists of 212 pages, 142 of which are printed with textual material, and 13 of which contain the index, foreword, preface, introduction, bibliography, and comments on the contributors to the collective work. Approximately 84 pages of the book contain color and black and white illustrations; 63 of the above-mentioned 84 pages comprise a "Catalogue of Objects" associated with the Huichol culture. The objects are classified by the editor as sacred or votive offers, or clothing, and within those categories, by object type and development in time.

The remaining illustrations are printed within the textual narrative of the book, to illustrate it, or to enhance the aesthetic quality of the publication.

The textual narrative of the book consists of eight original essays authored by the various contributors, placed, according to the editor, in "complementary opposition" to each other under four topics: "Huichol Sacred Art," the "Religious Experience," "Acculturation," and "Economics and Shamanism."

The subject of the essays is a scholarly discussion of various aspects of the Huichol Indian culture, from the sociological and anthropological point of view such as: The work of early ethnographers; the role of women in Huichol sacred art; the use of peyote by the Indians examined from the cultural and chemical point of view; the impact of western civilization on the Huichol political; and economic structure and Shamanism in its worldwide and Huichol context.

The scholarly dissertation does not contain the requisite elements of drama and is thus, nondramatic literary material.

Law and analysis.—The U.S. Copyright Law in section 601 (17 U.S.C. 601) prohibits the importation into the United States of copies of copyrighted works, consisting preponderantly of nondramatic literary material, that is in the English language, unless the portions consisting of such material have been manufactured in the United States or Canada, subject to certain exceptions listed therein.

The above prohibition, by definition, does not extend to, among others, pictorial or graphic work, public domain material, or material exempted from the requirement such as that authored by American nationals domiciled abroad from the year preceeding the date of importation.

A work consisting of a combination of pictorial graphic material or exempted works and nondramatic literary material is not considered to consist "preponderantly" of nondramatic literary material unless the latter exceeds the former in importance.

In order to determine the relative importance of the nondramatic literary material in a publication, it must be appraised in both its qualitative and quantitative aspects.

In regard to the subject book, it is evident that the number of pages containing textual narrative exceeds the number of pages devoted to pictorial graphic material.

Given the nature of the textual narrative contained in the subject book, we conclude, that, in a quantitative sense, it consists preponderantly of nondramatic literary material written in the English language.

However, our qualitative valuation of the relative importance of the book's pictorial graphic material leads us to conclude in an opposite manner.

It is evident that the purpose behind the book's publication, as well as the gathering of the essays portraying different points of view on the art and culture of the Huichol Indians, was to preserve an historic record of an exhibition of Huichol yarn paintings, religious objects, and ceremonial costumes presented by the Fine Arts Museum of San Francisco.

The objects depicted in the pictorial graphic material of the book are, according to the editors, those most traditionally based or central to the Huichol culture, a selection of which had never before been published comprehensively, or made available to the public on a large scale.

Although most of the essays delve into other aspects of the Huichol culture besides art, and that art is discussed mainly in the context of being a manifestation of a culture, the scholarly discussion contained therein is plainly directed to provide the reader with the necessary elements to appreciate the artistic qualities of the objects portrayed in the pictorial part of the book.

Without such dissertation, many of the articles would be viewed as devoid of any meaning or significance and as mere curiosities. It is clear that the book's main purpose is to provide the reader with a catalogue of Huichol art.

In consideration of the above stated, we conclude that, in a qualitative sense, the pictorial graphic material of the book exceeds the textual narrative in importance within the meaning of 17 U.S.C. 601. The relative importance of the illustrations contained in the book overrides the quantitative superiority of the textual narrative.

Holding.—The book, "Art Of The Huichol Indians," consists preponderantly of pictorial graphic material within the meaning of 17 U.S.C. 601. Accordingly, the prohibitions contained in 17 U.S.C. 601 are not applicable to its importation into the United States.

(C.S.D. 79-210)

Valuation: Export Value; Whether Invoice Unit Value May be Advanced by a Percentage for Currency Fluctuation

Date: October 24, 1978
File: R:CV:V BS
541612

Re decision on application for further review of protest No. 3201-7-000082.

DISTRICT DIRECTOR OF CUSTOMS,
Honolulu, Hawaii.

DEAR SIR: The issue involved in the subject protest is whether the appraisal of merchandise on the basis of export value at the invoice unit value plus a certain percentage for currency adjustment was proper.

The merchandise was purchased from Japan and appraised on the basis of export value at the invoice unit values plus a percentage addition which represented the difference in the yen/dollar exchange on the date(s) of the order(s) and the actual date of exportation. The percentage addition reflected the upward revaluation of the yen between these dates in accordance with a Customs Service directive on the assumption that the merchandise increased in value in proportion to the descendance of the dollar vis-a-vis the yen.

In *CBS Imports Corporation* v. *United States*, C.D. 4739 (1978), the Customs Court held that a percentage addition to the invoice unit value solely to represent the difference in the yen/dollar exchange rate between the dates of orders and the date of exportation was not properly included as part of export value. Rather, export value is based exclusively on the freely offered price of the merchandise. (An appeal was not filed in that case and accordingly the Customs Court

decision has become final.) As a result of this decision, Customs practice of advancing the invoice unit values to account for the fluctuation in the exchange rate was overruled.

In the instant case, the invoice unit value was advanced due to currency fluctuation. There is no evidence that the price had actually changed from the original entered value. Under the circumstances, assuming no actual price advance in an amount equal to the addition for currency fluctuation at the date of exportation, export value cannot be represented by the invoice unit value plus such addition. Accordingly, the protest is granted to the extent the protestant seeks to deny the advance in the invoice unit value due solely to currency fluctuation.

The entry and supporting documentation must now be examined to determine whether there is a statutory export value for the merchandise, and if so, whether such value is represented by the invoice unit value.

(C.S.D. 79–211)

Classification: Toy Building Blocks

Date: October 25, 1978
File: CLA–2:R:CV:MA
056236 SST

Re application for further review of protest No. 17037000077, toy building blocks. Item 737.55, Tariff Schedules of the United States (TSUS).

DISTRICT DIRECTOR OF CUSTOMS,
Savannah, Ga.

DEAR SIR: This protest was filed against your decision in the liquidation of entry Nos. 716510 and 716513 of June 28, 1977, at the Port of Savannah.

The merchandise which is the subject of this protest consists of castle pileups, irregularly shaped articles used by children for stacking one on top of the other.

Upon entry this merchandise was classified as other toys, not specially provided for, in item 737.95, TSUS, and dutiable at the rate of 17.5 percent ad valorem. The importer claims that this merchandise is properly classifiable as toy building blocks, bricks, and shapes, in item 737.55, TSUS, and dutiable at the rate of 10.5 percent ad valorem.

The importer takes the position that these turreted castle pileups are used by children to make a castle and that they are therefore

used in construction play, which would bring them into the category of building blocks and shapes. The importer relies in part on the holding in the recent case of *Creative Playthings, Division of Columbia Broadcasting System, Inc.* v. *United States*, C.D. 4554 (1978), which concerned cloth-covered, foam rubber squares. The squares were held to be classifiable as building blocks because they were used by young children to build structures.

It is to be noted, however, that unlike the foam rubber square in thes *Creative Playthings* case, the subject merchandise is not flat surfaced and the pieces cannot be interchanged in constructing the castle. There is but one structure which can be made—a castle—and it can be constructed only by putting the progressively smaller pieces on top of the larger pieces. As was stated in *1–2 Kangaroo, Inc.* v. *United States*, 66 Cust. Ct. 471, C.D. 42361 (1971), those articles which are merely capable of being stacked and which cannot be combined in any number of simple or complicated forms are precluded from the building blocks and shapes provision of the tariff schedules. The essence of the act of building is putting things together in various configurations with no finite limitation to the number of structural combinations which may be formed.

Based on the foregoing, the castle pileups are not toy building blocks and shapes within the contemplation of item 737.55, TSUS. They are classifiable as other toys, not specially provided for, in item 737.95, TSUS.

This protest, therefore, should be denied in full.

(C.S.D. 79–212)

Classification: Glass Articles Used in Ornate-Type Bathroom Fixtures

Date: October 25, 1978
File: CLA–2:R:CV:MSP
055248 SF

MR. HARRY G. KELLY,
District Director of Customs,
P.O. Box 52790, Houston, Tex.

DEAR MR. KELLY: This ruling concerns your request for internal advice No. 00052, on classification of certain glass articles imported from West Germany (IA No. 52/78).

Issue.—Whether these glass articles, which this particular importer uses in ornate-type bathroom fixtures, are classifiable under (a) the provisions for household articles of glass, in items 546.52 through

546.59, Tariff Schedules of the United States (TSUS), dutiable at the respective rates of 50 to 15 percent ad valorem depending upon their value, (b) under the provision for chandelier parts, in item 545.57, TSUS, dutiable at 12 percent ad valorem, or (c) under some other provision of the tariff schedules.

Facts.—All of the articles in question are made of faceted glass, having a prism-like appearance. They are of various sizes and shapes. For the purpose of facilitating discussion, the samples will be described in three groups as follows.

Group A consists of one sample, article 5624. It is a faceted glass ball, 1⅛ inches in diameter, having a small glass shank with a hole entirely through the center of the shank. Also, this sample weighs considerably less than the remaining articles.

Group B consists of five articles, all of which are of faceted clear glass and have a hole of one-half inch in diameter entirely through their centers. They weigh several ounces each, and all vary somewhat in size and shape:

Article 100474 is a ball, 1⅞ inches in diameter;
Article 101929 is a shape, 1½ inches in diameter;
Article 103283 is another shape, 1¾ inches in diameter;
Article 101930 is a shape, 2 inches in maximum diameter, with a flat top and bottom; and
Article 103327 is a tapered shape, 1¾ inches in diameter.

Group C consists of three articles. Articles 104155 and 104710 are both faceted glass sleeves which have ¼-inch holes through the lengths of their centers. The third article is numbered 104156 and is a flat, ring-like escutcheon with an outside diameter of 2½ inches and a 1½-inch circular opening in its center.

Investigations concerning classification of the three groups of articles were conducted by Customs officers with companies in Houston and New York. The results of the investigations are discussed below.

Law and analysis.—The plain meaning of the language of all of the provisions at issue indicates that they are chief use provisions. Thus, the classification issue depends primarily upon determination of the chief use of the articles in question.

Under general interpretative rule 10(e)(i), TSUS, chief use is the use which exceeds all other uses. To elaborate, chief use means the principal or predominant use, neither exclusive use nor a fugitive use, but the usual and common use. See Sturm, "Manual of Customs Law" (1974), at 221, and citations therein.

The question of chief use is primarily one of fact, and there must be proof of such use. *Voss International Corp.* v. *United States*, C.D. 3544 (1968). Evidence of chief use in a large or otherwise representative

part of the country is sufficient to show chief use. *United States* v. *F. W. Woolworth Co.*, 23 CCPA 98, at 100 (1935). We submit that New York is such a representative area for the purpose of determining chief use, as in the New York area there exists a market as large as any in the country for glass articles such as those in the instant case. With this in mind, we now turn to an analysis of the chief use of the articles in question.

As to the article in group A, there is little doubt concerning its chief use. Throughout the exhibits of photographs presented, this article is shown suspended from chandeliers as a fob. All evidence submitted indicates that the chief use of this article is as a part of chandeliers. Moreover, Customs has classified similar articles as chandelier parts in headquarters file 039043 of April 4, 1975.

Accordingly, article 5624 is classifiable as a chandelier part under item 545.57, TSUS, with rate of duty at 12 percent ad valorem.

As to the articles in group B: After having visited two lighting fixture stores where none of these articles were observed in lighting fixtures, one port submits that these articles are too heavy to be of a type used in chandelier construction. From this observation and from the fact that this particular importer uses these articles solely as parts of lavatory fixture parts, it might be concluded that the chief use of the articles is as household articles. However, the use to be established is that of the class or kind of article to which the merchandise belongs, and not the actual use of a particular shipment.

Based on data from three prominent New York trade sources, including two leading importers of chandelier and lamp parts and a dealer in ornate-type bathroom fixtures, it appears that the articles were too heavy to be of a type used in chandelier construction. While all of the above articles were too heavy to be of a type used in chandeliers, they are readily useable in the construction of lamps, particularly for use as lamp breaks. Furthermore, the ½-inch holes through all of these articles facilitate their use with the standard ½-inch pipe used in the lighting trade. If an article has been made to specifications which regularly adapt it to a certain end, it may be considered dedicated to that purpose even though it may be used independently or fugitively in some other way. *United States* v. *F. B. Vandegrift & Co., Inc.*, 44 CCPA 15 (1968). It is acknowledged that all of these articles could be adapted for bathroom fixture use, but such use is a fugitive use, while the chief use is as lamp parts. Note also, that the manufacturer of these articles, Gustav Lindner, Inc., is principally a supplier to the lighting trade.

The articles in group B are thus classifiable as parts of illuminating articles under item 545.67, TSUS, dutiable at the rate of 12 percent ad valorem.

Classification of the articles in group B as lamp parts is not in conflict with CIE N–63/76. The articles of group B are distinct from those in CIE N–63/76, as the articles to which that ruling pertained were only the knobs with holes partially drilled through, or countersunk. Articles appearing in CIE N–63/76 which look much like those in the present case appeared there only by virtue of the fact that they were depicted on the same page of the catalog as the articles in question. (That ruling does not apply to the six illustrations of towel bars which use glass articles like those in the present case, but only to the glass knobs with countersunk holes.)

With respect to the articles in group C, the sleeves and escutcheon: It is agreed that these items are not of a type used in chandeliers or lamps, and the experts consulted neither market nor use these articles in chandeliers or lamps nor know of anyone who does. Rather, they are of a type chiefly used in the household. Note also, that the ¼-inch holes in the sleeves would preclude their use with the standard ½-inch pipe of the lighting industry.

It is the importer's position that the items, if not chiefly used in chandeliers, are "parts" of household articles and classifiable under the provisions for articles not specifically provided for of glass, other, in item 548.05, TSUS, since items 546.52 though 546.59, TSUS, do not provide for parts. The U.S. Customs Court has held that neither of these competing provisions provides for "parts" of an article. *L & B Products Corp.* v. *United States*, C.D. 4404 (1978) at 32, 33. The question then is one of relative specificity of the two competing provisions: The article will be classified under the provision which most specifically describes it. *United States* v. *Simon Saw & Steel Co.*, 51 CCPA 33 (1964). A "not specifically provided for" clause in a use provision excludes therefrom articles enumerated elsewhere, *United States* v. *Lansen-Naeve Corp.*, 44 CCPA 31 (1957). Thus, the more specific provision for household articles applies.

Accordingly, the escutcheon and sleeves are classifiable under the provisions for household articles of glass, in items 546.52 through 546.59, TSUS, depending upon their value. Note also that Customs earlier classified similar sleeves under this provision. See CIE 1937/66.

Conclusion.—For all of the above-stated reasons, the group A item is classifiable under the provision for chandelier parts, item 545.57, TSUS, dutiable at 12 percent ad valorem. The items in group B are classifiable as lamp parts under item 5455.67, TSUS, dutiable at 12 percent ad valorem. Finally, the articles in group C are classifiable under the provisions for household articles of glass, item 546.52 through 546.59, TSUS, dutiable at the respective rates of 50 to 15 percent ad valorem, depending upon value.

(C.S.D. 79-213)

Classification: Plastic Sheeting of Polyvinyl Chloride and Glass Fibers

Date: October 25, 1978
File: CLA-2:R:CV:MA JB
055199

Re decision on application for further review of
protest No. 04017000-352.

DISTRICT DIRECTOR OF CUSTOMS,
Boston, Mass.

DEAR SIR: This ruling concerns the protest filed against your decision classifying certain plastic sheeting from Switzerland as articles not specially provided for, of plastics, under item 774.60, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8.5 percent ad valorem. The merchandise is covered by consumption entry No. 116664 dated November 3, 1975, which was liquidated on July 22, 1977.

The protestant claims that the merchandise would be more properly classifiable as sheets wholly or almost wholly of plastics; not of cellulosic plastics materials; sheets which are flexible, other, under item 771.42, TSUS, dutiable at the rate of 6 percent ad valorem.

Facts.—The sheeting is comprised of 97 percent polyvinyl chloride and 3 percent glass fibers. Glass fibers are added to the polyvinyl chloride to help retard shrinkage. The polyvinyl chloride accounts for 92 percent of the sheet's value, and the glass fibers account for the remaining 8 percent of value.

Issue.—Is the plastic sheeting considered to be wholly or almost wholly of plastic thereby qualifying it for classification as plastic sheet under item 771.42, TSUS? Does the presence of glass fibers in the sheet remove it from classification as plastic sheet wholly or almost wholly of plastic and make it classifiable as articles of plastic under item 774.60, TSUS?

Under headnote 1(b)(i), schedule 7, part 12, TSUS, the term "plastics" refers to synthetic plastics materials, as defined in parts 1C and 4A of schedule 4. Headnote 3 of part 1C of schedule 4 states that the term "plastics materials" embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which plasticizers, fillers, colors, or extenders may be added. Headnote 2, schedule 4, part 4A states that the term "synthetic plastics materials" encompasses products formed by condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifer, extender, or filler may have been added.

It is clear from the above definitions that a plastics material may include certain fillers. The subject polyvinyl chloride sheet has been analyzed by headquarters laboratory and has been found to qualify as a plastics material under the above definitions. The glass fibers act merely as a filler. Their presence would not be controlling in the final classification of the sheet.

Holding.—The polyvinyl chloride sheet including glass fibers would be classifiable as sheets, wholly or almost wholly of plastics; not cellulosic plastics materials; sheets which are flexible, other, under item 771.42, TSUS, dutiable at the rate of 6 percent ad valorem. It is presumed that the dimensional requirements of headnote 2(iv), schedule 7, part 12, subpart B, will be met.

Accordingly, the protest is allowed in full and an appropriate refund of duties is directed. All pertinent papers are returned to permit liquidation of the entry.

(C.S.D. 79–214)

Classification: Whether Overlaid, Folded Fabric Strips Sewn Above; But Not Directly Into, Shirt Seams Constitute Ornamentation

Date: October 26, 1978
File: CLA–2:R:CV:MC
053835 PR

Re decision of application for further review of protest No. 11017000139.

DISTRICT DIRECTOR OF CUSTOMS,
Philadelphia, Pa.

DEAR SIR: This protest is against your decision in the liquidation on March 4, 1977, of entry No. 108743, dated November 9, 1976. It involves the tariff classification of certain men's or boys' shirts.

The merchandise was classified under the provision for other men's or boys' wearing apparel, ornamented, of cotton, in item 380.00, Tariff Schedules of the United States (TSUS), with duty at the rate of 35 percent ad valorem. The protestant believes that the merchandise should be classified under the provision for other men's or boys' wearing apparel, not ornamented, of cotton, knit, in item 380.06, TSUS, with duty at the rate of 21 percent ad valorem. The issue presented is whether the merchandise is ornamented for tariff purposes.

The submitted sample is a man's knit cotton shirt, similar in construction and weight to a sweat shirt. It has long sleeves with cuffs, a pointed collar, knit terry-like elbow patches, and a waistband. The V-neck opening has been filled in with a piece of contrasting colored

knit fabric to create a closed front. The garment has raglan sleeves and stitched above the seams where the sleeves join the garment are strips of contrasting colored knit fabrics. These strips of fabric are approximately seven-eighths inch wide and are folded lengthwise three times so that the folded material is about one-fourth inch wide. A single row of stitching runs through the approximate center of the folded material holding it to the garment above the seam. The garment was classified as ornamented because of the presence of these folded strips of fabric which present a decorative appearance.

It is the position of the protestant that the folded strips of fabric constitute piping and that it reinforces the seams of the garment. In support of this position, numerous headquarters rulings holding that piping does not constitute ornamentation were cited. Also submitted were the results of tests which show that the seams with the overlaid folded fabric above them had higher bursting strengths than the seams without these overlaid fabrics.

Headnote 3, schedule 3, TSUS, states what the term "ornamented" means for tariff purposes. Rather than being a definition of that term, headnote 3, contains a listing of various types of features that may constitute ornamentation when found on fabrics and articles of textile materials. The features listed in headnote 3 constitute ornamentation only when they serve primarily to adorn, embellish, decorate, or enhance the fabric or article on which they are found. Where the functional purpose of that feature is paramount and the decorative effect only incidental, any of the features listed in the headnote would not create an ornamented article within the scope of that headnote. *Blairmoor Knit Wear Corp.* v. *United States*, 60 Cust. Ct. 338, C.D. 3396 (1968). Paragraph (a)(iii) of headnote 3 lists two types of ornamentation applicable to the instant merchandise, trimming and textile fabric. A trimming is defined as narrow fabric used to trim or edge garments. See "Summaries of Tariff Information," 1948, volume 6, page 48.

Piping is generally defined by the "Fashion Dictionary," at page 278, and the "Modern Textile and Apparel Dictionary," at page 428 as a narrow bias fold or cord used in finishing edges or as a narrow piece of fabric sewn into seams. The U.S. Customs Service has developed over the years an established and uniform practice to classify piping sewn into seams as not ornamented for tariff purposes where that piping extends less than one-quarter inch beyond the surface of the fabric. However, that practice of classification does not extend to piping that is not sewn into the seam. In this connection, see CIE 885/62 and the headquarters letter explaining that CIE, TC 471.3, dated November 5, 1962, copies enclosed. The practice of classification developed because it was thought that piping which was inserted into seams performs the

structural function of increasing the strength of those seams. The existence of the practice has prevented the Customs Service from reevaluating the function of piping.

Concerning the instant sample, we need not determine whether or not the overlaid folded strips of fabric constitute piping since they are not inserted in the seam and, therefore, are not subject to the practice of classification.

While it is true that the seams which are covered by the overlaid folded fabric strips are stronger than the side seams and sleeve seams of the garment which do not have those folded fabric strips, there is no evidence that the additional strength is needed at those seams or that the fabric strips themselves supply that additional strength. It appears from an examination of the sample that it is not the fabric strips that impart the added strength to the seams, but, rather, it is the stitching that holds the fabric strips in place. Thus, even if the added strength is necessary at those seams, for which there is no supporting evidence, only the stitching would be utilitarian. Since the seams under the folded fabric strips require no further finishing, these fabric strips serve no apparent utilitarian function with relation to the wearing of the garment. They serve solely to enhance the appearance of the garment and, therefore, constitute ornamentation for tariff purposes.

Accordingly, it appears that the merchandise was correctly classified and you are hereby directed to deny the protest in full. Your file is returned herewith.

(C.S.D. 79–215)

Penalties: Vessel Master's Liability for Manifest Discrepancies; 19 U.S.C. 1584; Customs Penalty Decision 78–1 Superseded

Date: November 27, 1978
File: ENF 4–02.5 R:E:M
609260 JB

To: Regional Commissioner of Customs, Houston, Tex.
From: Director, Entry Procedures and Penalties Division.
Subject: Unmanifested cargo found in sealed containers; violations of 19 U.S.C. 1584.

Your memorandum of October 12, 1978, requested reconsideration of policy set forth in Customs penalty decision 78–1. That decision held that the master of a vessel retains technical responsibility for any inaccuracy in the manifest. Upon discovery of discrepancies, the master will be penalized for failure to mainfest under title 19, United States Code, section 1584, even though he was not personally negligent.

Thus, a container could be sealed before delivery to the master and although he had no knowledge of any manifest inaccuracies he would still be held liable therefore. However, a full remission of the penalty will be granted when a petition for relief is submitted pursuant to title 19, United States Code, section 1618.

You are of the opinion that the above penalty would be assessed in full knowledge that surrounding facts would require a full remission of the assessment and that such an exercise would only create unnecessary paperwork. You also believe that imposition of penalties in cases such as the above would be harmful to Customs regulations with the carrier trade.

It should be noted that CPD 78–1 was not intended to supercede the regulations (19 CFR 4.12) as they relate to discrepancies caused by clerical error. Treatment of such inaccuracies would still be at the discretion of the appropriate Customs officer as provided for in title 19, United States Code, section 1584.

The Customs Procedural Reform Act of 1978, Public Law 95–410, amended section 1584 of title 19, United States Code, by extending liability for any discrepancy between the merchandise and manifest to "any person directly or indirectly responsible for any discrepancy." The intent of this provision is to penalize those directly or indirectly responsible for manifest discrepancies and to remove absolute liability for those same discrepancies from the master. Thus, if the master is not negligent he will not be held technically liable for manifest inaccuracies. The new law supercedes CPD 78–1. Penalties need not be imposed against a master for technical violations of 19 U.S.C. 1584 if subsequent full remission of the penalty is indicated.

(C.S.D. 79–216)

Value: Whether a Missing Element of Value From the Export Price Precludes a Finding of U.S. Value

Date: January 23, 1979
File: R:CV:V BS
055347

Re clarification of decision dated August 3, 1978, on application for further review of protest Nos. 5402–7–000001 through 5402–7–000005; International Armament Corp.

DISTRICT DIRECTOR OF CUSTOMS,
Baltimore, Md.

DEAR SIR: This ruling is issued as a clarification of the above-captioned decision with regard to the determination of a U.S. value. The

merchandise is on the final list (T.D. 54521) and, accordingly, is to be appraised under the "old law," section 402a, Tariff Act of 1930, as amended.

The foreign manufacturer sold Mauser pistols to the importer at a price below the manufacturer's cost of production. Both foreign value and export value were precluded from being used as the basis of appraisement and this is not in dispute. It is the importer's position that the fact that the manufacturer suffered a loss on the sale to the importer does not affect the determination of whether a United States value can be determined, that it is unnecessary under the statute for the resale price in the United States to recover all elements of value, and that in fact the merchandise was freely offered and meets the statutory requirements for U.S. value.

Although not in the record, we understand from our conversations with Customs field officials and from protestant's counsel that the sole reason for rejection of a U.S. value is that the manufacturer's cost of production was not recovered in the price at which the merchandise was sold for exportation to the United States.

In our prior ruling, we concluded that a U.S. value cannot be summarily rejected merely because the export price does not include an element of value. It appears that this and perhaps other language in the ruling was interpreted to mean that a U.S. value may be determined only if elements of value missing from the export price are recovered in the resale price in the United States. This is not the law and it is apparent that our ruling did not go far enough in addressing the specific question at issue.

In determining whether a U.S. value exists, the appraising officer must determine whether the merchandise is freely offered in the United States to all purchasers at wholesale in the ordinary course of trade; allowances for general expenses, commission or profit, not to exceed certain stated percentages, must also be determined. The fact that an element of value is missing from the export price and is not recovered in the resale price in the United States is not relevant in making this determination. Thus, if merchandise with a cost of manufacture of $125 is sold to the importer for $100, and he in turn sells the merchandise at $110, a U.S. value may be determined assuming the goods are freely offered to all purchasers at wholesale, and the other statutory criteria are satisfied.

Although not pertinent to the specific situation under consideration, it is noted that there is no statutory provision under the old law (as there is in the new law) for disregarding transactions between related parties where an element of value does not fairly reflect the amount usually reflected in sales of merchandise of the same general class or

kind (sec. 402(g)); so that even if the importer and exporter were related parties, it would not per se affect the determination of whether a U.S. value exists. However, the old law does provide protection in the form of maximum statutory allowances so that, for example, an exorbitant profit made upon resale in the United States as the result of a "rigged" export price would be limited to a maximum of 8 percent as an allowance.

We understand that part of the protest applicable to the U.S. value issue has already been denied, because of a misinterpretation of our decision of August 3, 1978. Apparently, it was believed that our decision precluded a finding of U.S. value, when in fact that was not the case. For example, at page 4 of that decision we said: "Therefore, a U.S. value cannot be summarily rejected merely because the export price does not include an element of value." In the last paragraph of that decision, we said: "You are also directed to appraise the merchandise under U.S. value if it can be satisfactorily determined that it exists."

We conclude that the failure to consider the possible applicability of U. S. value was due to an inadvertence or a mistake of fact as to the meaning of our August 3 decision, within the scope of section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520 (c)(1)). Therefore, assuming a U.S. value may be determined, you are directed to void your prior denial of this aspect of the protest, and allow the protest to the extent that it alleges the existence of a U.S. value.

U.S. Customs Service

General Notice

(521114)

American Manufacturer's Petition

Notice of receipt of American manufacturer's petition alleging that the appraised value of certain printing presses manufactured in East Germany is too low

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: Customs has received a petition from an American manufacturer of web-fed offset lithographic printing presses alleging that the appraised value of certain web-fed lithographic printing presses from East Germany is too low.

DATES: Interested persons may comment on this petition. Comments (preferably in triplicate) must be received on or before July 3, 1979.

ADDRESS: Comments should be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, room 2335, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Burton L. Schlissel, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–2938.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of web-fed lithographic printing presses. The petitioner alleges that the appraised value of the Zephyr 300 printing press, a web-fed lithographic printing press manufactured by the Polygraph Co. of Leipzig, German Democratic Republic (East Germany), is too low. Importations of the Zephyr 300 printing press are being classified under the provision for other printing machinery in item 668.20, Tariff Schedules of the United States, with duty at the column 2 rate of 25 percent ad valorem.

The petitioner bases his allegation, in part, upon a comparison of the value of an equivalent printing press manufactured in West Ger-

many with Department of Commerce data regarding the value of web presses imported from East Germany.

The petitioner estimates the present appraised value of the presses to be $60,138, based on Commerce Department (Bureau of Census) data for the year 1977.

The petitioner claims a value for the presses of $290,907. It should be noted that some question exists as to whether the same electrical components are included in the presses on which the present appraised value was calculated, as are included in the presses on which the claimed value was calculated.

COMMENTS

Pursuant to section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with sections 103.8(b) and 175.21(b), Customs Regulations (19 CFR 103.8(b), 175.21(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, room 2335, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

Dated: April 27, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

[Published in the Federal Register, May 4, 1979 (44 F.R. 26233)]

(521117)

American Manufacturer's Petition

Notice of receipt of American manufacturer's petition alleging that the appraised value of tapered roller bearings and components imported from Japan is too low

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: Customs has received a petition from an American manufacturer of tapered roller bearings and components alleging that

the appraised value of tapered roller bearings and components imported from Japan is too low.

DATES: Interested persons may comment on this petition. Comments (preferably in triplicate) must be received on or before July 3, 1979.

ADDRESS: Comments should be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, room 2335, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jesse V. Vitello, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8410.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of tapered roller bearings and components. The petitioner alleges that the appraised value of certain tapered roller bearings and components manufactured in Japan by Koyo Seiko Co., Ltd., Nippon Seiko, K.K., Fujikoshi, Ltd., and the Toyo Bearing Manufacturing Co., Ltd. is too low. This allegation is based upon a claimed disparity between the average unit dutiable value of the subject tapered roller bearings and their average unit foreign value. The average unit dutiable value is derived by petitioner from Department of Commerce data for 1978 concerning tapered roller bearings and components classified under item 680.35, Tariff Schedules of the United States. The average unit foreign value is derived by petitioner from independent market research data indicating the prices at which tapered roller bearings are offered for sale by distributors in the Japanese home market. The petitioner asserts that the average unit dutiable value of tapered roller bearings and components from Japan is approximately one-third of the Japanese home market price.

The petitioner alleges that the present appraised value is $1.66 (average unit dutiable value) and claims that the value should be $4.67 (average unit foreign value/Japanese home market price).

COMMENTS

Pursuant to section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspec-

tion in accordance with sections 103.8(b) and 175.21(b), Customs Regulations (19 CFR 103.8(b), 175.21(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, room 2335, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

Dated: April 27, 1979.

DONALD W. LEWIS,
Assistant Commissioner,
Regulations and Rulings.

[Published in the Federal Register, May 4, 1979 (44 F.R. 26233)]

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1223)

INDIAN HEAD, INC. *v.* THE UNITED STATES No. 79–1 (— F. 2d —)

1. Classification of Imports—White Wool Yarn—TSUS

Customs Court decision, rejecting importer-appellee's claim that 3-inch strips of white wool yarn were entitled to duty-free entry under TSUS item 307.60, is reversed.

2. Doctrine of Noscitur a Sociis—"In Which Color is Imparted"—TSUS

Under the doctrine of noscitur a sociis, the meaning of the phrase "in which color is imparted" in the definition of the term "colored" in TSUS schedule 3, headnote 2(b), is ascertained by reference to the exemplar processes of "dyeing, staining, painting, printing, or stenciling" with which the phrase is associated.

3. Id.

Treatment of yarn with Uvitex, an optical brightener, constitutes dyeing. Since dyeing is one of the exemplar processes associated with the phrase "in which color is imparted," treatment of yarn with Uvitex constitutes a process "in which color is imparted" within the meaning of that phrase in TSUS schedule 3, headnote 2(b).

4. Id.—Removal of Color

The requirement that color be imparted in the definition of the term "colored" in TSUS schedule 3, headnote 2(b), does not preclude a color change brought about by removal of color.

5. Intent of Congress

In order to effectuate the will of Congress, white is considered a color for purposes of applying TSUS item 307.60.

U.S. Court of Customs and Patent Appeals, April 26, 1979

Appeal from U.S. Customs Court, C.D. 4758

[Reversed.]

Edward J. Farrell (Bronz & Farrell), attorneys of record, for appellant.
Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Acting Director, Commercial Litigation Branch, *Joseph I. Liebman, Madeline B. Cohen, Susan C. Cassell* for the United States.

[Oral argument on April 2, 1979, by Edward J. Farrell for appellant and by Susan C. Cassell for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER, *Associate Judges*, and KASHIWA,* *Judge*.

KASHIWA, Judge.

[1] This appeal is from the judgment of the U.S. Customs Court, 81 Cust. Ct. —, C.D. 4758, 458 F. Supp. 807 (1978), which rejected the importer-appellant's claim that the imported merchandise, white wool yarn, was entitled to duty-free entry under item 307.60 of the Tariff Schedules of the United States (TSUS). We reverse.

Background

The imported merchandise consists of 3-inch strips of white wool yarn used for latch-hooking articles such as rugs, pillows, and wall hangings. This white yarn is purchased, marketed, packaged, and priced in the same way as 3-inch strips of wool yarn of 46 different colors. The imported yarn has been changed from its natural color to white by bleaching it with peroxide and then treating it with Uvitex, an optical fluorescent brightener often referred to as white dye.

The Regional Commissioner of Customs classified the imported yarn under TSUS item 307.64,[1] a basket provision. The importer contested, claiming that the imported yarn should have been classified under TSUS item 307.60,[2] a more specific, duty-free provision. The Customs Court sustained the Commissioner's classification concluding that the imported yarn did not fall within TSUS item 307.60 because it was not "colored" as that term is defined in TSUS schedule 3, headnote 2(b).[3] The court gave two bases for this decision: (1) The court concluded that Congress did not contemplate by using the phrase "in which color is imparted" a color change brought about by the removal of color; and (2) the court determined that white is not a color.[4]

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* The Honorable Shiro Kashiwa, Judge, U.S. Court of Claims, sitting by designation.

[1] Yarns of wool or hair:

* * * * * * *

307.64 Other

[2] Yarns of wool or hair:

307.60 Yarns of wool, colored, and cut into uniform lengths of not over 3 inches, in immediate packages or containers not over 6 ounces in weight including the weight of the immediate package or container.

[3] See infra.

[4] There is no dispute that the imported yarn meets all of the other conditions of TSUS item 307.60, save the requirement that the yarn be colored.

Opinion

[2] This appeal raises the question of what Congress meant when it used the phrase "in which color is imparted" in the definition of the term "colored" in TSUS schedule 3, headnote 2(b):

> [T]he term "colored", as used in connection with textile materials or textile articles, means that they have been subjected to a process such as, but not limited to, dyeing, staining, painting, printing, or stenciling, *in which color is imparted* at any stage of manufacture to all or part of the fiber, yarn, fabric, or other textile article, except identification yarns and except marking in or on selvages. [Italic added.]

One of the basic rules of statutory construction used in customs classification cases is the doctrine of noscitur a sociis. R. Sturm, "A Manual of Customs Law," 177–79 (1974). Under this doctrine, the meaning of a word may be ascertained by reference to the meaning of words associated with it. In headnote 2(b), the phrase "in which color is imparted" is associated with the exemplar processes of "dyeing, staining, painting, printing, or stenciling." Thus, applying the rule of noscitur a sociis here, we must conclude that Congress meant by the phrase "in which color is imparted" the phenomenon that occurs when an article is dyed, stained, painted, printed, stenciled, or similarly processed.

This leads us to the question of whether the imported yarn has been subjected to any of such processes.[5] Appellant-importer argues that treatment of the yarn with Uvitex constitutes dyeing. The Government disagrees.

The testimony of the Government's witnesses is very generalized and ambiguous on this point. Dr. Allen states that "[a]n optical brightener is often referred so as a white dye" but adds that "[he] thinks [this] is confusing because [he] believes that the function of the brightener is not to add color, but to remove it." Professor Price comments that treatment of yarn by bleaching it and subjecting it to a process using optical brighteners "constitute[s] a dyeing, but not a dyeing that imparts color."[6]

The testimony of the importer's witness, Mr. Hay, is more helpful since he describes what actually occurs when yarn is treated with Uvitex and compares this process with that which occurs in dyeing to other colors. The two processes are strikingly similar. Both are per-

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[5] Just because the imported yarn was not subjected to one of the exemplar processes does not resolve the issue, since headnote 2(b) is not limited to these processes. However if the yarn was subjected to one of these processes then color had to be imparted because the exemplar processes indicate what imparting color means.

[6] It is not clear what Professor Price means by this statement. Clearly his use of the terms "dyeing" and "imparts" differs from the meaning Congress attached to these words. Under Congress use of these terms, there could be no such thing as a dyeing which does not impart color since "dyeing" is one of the exemplar processes which defines what imparting color means.

formed in conventional skein dyeing machines. Both require acidic conditions. In both the temperature is abruptly raised from around 115 degrees to around 200–210 degrees. As a result of both processes a substance is absorbed into the yarn, and finally both processes result in a change in the absorption of light characteristics of the yarn. There are differences too, as there are differences between dyeing to any two different colors. White yarn is dried at a lower temperature to avoid unwanted yellowing. Darker colored yarns remain in the dye bath longer. Some colors are obtained by mixing dyes. Only white and brilliant colored yarns like flame are bleached first. In dyeing yarns to other than white differing amounts of leveling agents are used. Also, application of optical brighteners causes absorption of light in the ultraviolet region of the spectrum, while application of conventional dyes causes absorption of light in the visible region.

[3] Weighing these similarities and differences, we conclude that the similarities are more significant. The essence of dyeing seems to be the absorption into the yarn of a substance which changes the light-absorption characteristics of the yarn. This occurs when yarn is treated with Uvitex. The differences are minor in comparison. Therefore, we hold that treatment of yarn with Uvitex constitutes dyeing. Since dyeing is one of the exemplar processes associated with the phrase "in which color is imparted," treatment of yarn with Uvitex must constitute a process "in which color is imparted" within the meaning of that phrase in TSUS schedule 3, headnote 2(b).

[4] We find no support for the Customs Court's conclusion, that Congress did not contemplate, by using the phrase "in which color is imparted," a color change brought about by the removal of color. Every color change can be said to consist of a removal of one color and an addition of another. While the Government's experts testified that treatment of yarn with Uvitex removed yellow, it would be just as accurate to say that treatment of yarn with Uvitex added white. While we agree with the Customs Court that the exemplar processes all involve the application or addition of pigment or other colorant, we note that in treatment of yarn with Uvitex, the acidic medium and raised temperature cause the Uvitex to be absorbed into the yarn in the same manner as in dyeing to any other color. Thus, treatment with Uvitex constitutes addition of a colorant.

[5] This brings us to the Customs Court's holding that white is not a color. The expert witnesses and lexicographic authority relied on below define white as the absence of color. Nevertheless, it is common practice to use the term "white" to describe the color of something, e.g., the residence of the President of the United States. Although "Webster's Third International Dictionary" defines "white" in defi-

nition 1a as "free from color," in definition 1b(1) it defines it as "of a color like that of new snow or clean milk: having the color of good bond paper or the traditional lily: *specif.:* of the color white." This issue reminds us of the old familiar metaphysical puzzles to which there are no answers, e.g., if nobody hears a tree fall in the forest, does it make a sound? Fortunately for us, however, our job is not to solve riddles. Rather, our task is simply to interpret the statute in such a manner as to effectuate the will of Congress.

In that regard, we note that the duty-free provision of TSUS item 307.60 has its origin in Public Law 85–284, which added paragraph 1822 to the free list of the Tariff Act of 1930. The genesis of this legislation was the desire to provide disabled people with the materials that were required for making hooked rugs at as low a cost as possible, because of the therapeutic value of rug making. (See 103 Cong. Rec. 16,768 (1957).[7]) The object designed to be reached by an act must limit and control the literal import of the terms and phrases employed. *Church of the Holy Trinity* v. *United States*, 143 U.S. 457 (1892). Since it is just as therapeutic to hook rugs with white yarn as it is with any other color yarn, we conclude that Congress must have intended white to be considered a color for purposes of applying TSUS item 307.60.

Accordingly, for the reasons set forth herein, the judgment of the Customs Court is reversed.

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[7] The change in terminology from "dyed" under paragraph 1822 of the Tariff Act of 1930 to "colored" in item 307.60 TSUS does not indicate a change in congressional motivation for making this item duty free. Rather, it reflects a desire to make the tariff schedules more precise by eliminating the indiscriminate use of terms such as "colored", "dyed", "printed", and "stained." See "Tariff Classification Study," explanatory notes to schedule 3 at p. 5 (1960).

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4797)

LAWRENCE BRAVERMAN *v.* UNITED STATES

Plastic Materials

Court Nos. 70/18972 and 70/18973

Port of Houston

[Judgment for defendant.]

(Decided April 18, 1979)

David S. Komiss and *Morris Braverman* for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Sidney N. Weiss*, trial attorney), for the defendant.

WATSON, Judge: In this action plaintiff is contesting the classification of two entries of merchandise as benzenoid plastic materials under item 405.25 of the Tariff Schedules of the United States (TSUS), dutiable at the rate of 2.5 cents per pound plus 16 per centum ad valorem.* Plaintiff claims that the proper classification should have been as waste and scrap, of plastic, under item 771.15 of the TSUS, dutiable at the rate of 3 per centum ad valorem. Plaintiff's alternative claim for classification as waste, not specially provided for, has not been pursued. Accordingly, it is deemed abandoned and is consequently dismissed.

With respect to plaintiff's claim for classification as plastic waste and scrap, it introduced no evidence directed toward proof of that claim. Instead, plaintiff resorted to an attack on the methods by which the Government arrived at its classification and the failure of the Government to provide samples of the importations.

However, plaintiff did not prove that the methods of sampling or testing were incorrect or that any other errors detracted from the presumptive correctness of the classification.

In addition, if samples of the importation were needed by plaintiff to prove its case the obligation to obtain those samples rested on plaintiff. *See L. B. Watson Co.* v. *United States*, 74 Cust. Ct. 193, C.R.D. 75–2 (1975).

For the above reasons judgment must be entered for the defendant. Judgment will enter accordingly.

(C.D. 4798)

PHARMACIA LABORATORIES INC. *v.* UNITED STATES

Radioimmunoassay Testing Kits

DIAGNOSTIC TEST KITS CONTAINING A RADIOACTIVE COMPOUND

A diagnostic test kit, used to measure certain chemicals in blood serum, is not classifiable as a usefully radioactive chemical compound under item 494.50 of the TSUS. That provision does not describe importations which consist of a number of separate compounds in addition to one that is radioactive. In functional terms, the antibody component, which determines the specificity of the

* The assessment of countervailing duty on the merchandise has not been challenged.

test, and the "standard" component, which provides a standard result against which to measure the result obtained from the serum under study, are no less important than the radioactive component which supplies the means of measurement. *Donalds Ltd., Inc.* v. *United States*, 32 Cust. Ct. 310, C.D. 1619 (1954); *United States* v. *Charles Garcia & Co., Inc.*, 48 CCPA 140, C.A.D. 780 (1961); *United States* v. *Aceto Chemical Co., Inc.*, 64 CCPA 78, C.A.D. 1186, 553 F. 2d 685 (1977); *United States* v. *Cavalier Shipping Co., Inc.*, 60 CCPA 152, C.A.D. 1103 (1973) distinguished.

Court No. 74-3-00675

Port of New York

[Judgment for defendant.]

(Decided April 18, 1979)

Murray Sklaroff for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Susan C. Cassell*, trial attorney), for the defendant.

WATSON, Judge: This action was commenced to contest the denial of plaintiff's protest against the tariff classification of four types of radioimmunoassay diagnostic testing kits. The kits are used to detect the presence of certain chemicals in blood serum in a manner detailed, infra. Most of the kits were classified under item 799.00 of the Tariff Schedules of the United States (TSUS)[1] as other articles not provided for elsewhere in the tariff schedules. They were assessed with duty at the rate of 6 or 5 percent ad valorem depending on the year of entry, pursuant to T.D. 68-9.

Plaintiff claims that the kits are properly classifiable under item 494.50 of the TSUS as a usefully radioactive chemical compound and should therefore be free of duty.

The parties are in agreement that these kits are entireties for the purpose of classification, and plaintiff further agrees that if the articles are not classifiable as it claims, the classification under item 799.00 is correct.

The short answer to plaintiff's claim is that the individual kit is not a chemical compound in its physical form. It is not a compound within the meaning of headnote 2 of schedule 4[2] and does not come

[1] Some entries were classified under item 429.95, 432.00, or 439.50. Defendant concedes the error of those classifications and, as to them, requests judgment without the affirmance of the classifications.

[2] 2. (a) The term "compounds," as used in this schedule, means substances occurring naturally or produced artificially by the reaction of two or more ingredients, each compound—

(i) Consisting of two or more elements,

(ii) Having its own characteristic properties different from those of its elements and from those of other compounds, and

(iii) Always consisting of the same elements united in the same proportions by weight with the same internal arrangement.

(Footnotes continues on following page.)

within the plain meaning of the claimed item.

Each imported article is a kit containing four or five separate vials, only one of which contains a radioactive substance. Thus, each kit is a collection of four or five distinct and separate compounds. In its imported form the kit is therefore not adequately or specifically described, in its entirety, as a usefully radioactive compound. The kits are simply too diverse in their contents to be properly described by the claimed provision. In short, the claimed provision cannot be interpreted to cover the importations. *The Englishtown Corporation* v. *United States*, 64 CCPA 84, 87, C.A.D. 1187, 553 F. 2d 1258 (1977).

Plaintiff has stressed the function of the radioactive material, but but even this line of argument could not obviate the separate existence of the other substances. Assuming, however, that the court was to enter into a functional analysis of the importations, the result would not be different.

The kits contain specific antibodies for the chemical sought to be measured. In essence, the antibody component is mixed with the radioactive component and with the blood serum under scrutiny. The chemical being measured competes with the radioactive material for attachment to the antibody.

Following the separation of the resulting mass of antibody (bound with the chemical sought to be measured and with radioactive material) the radioactivity is measured. The reading of radioactivity is inversely proportional to the amount of the chemical sought to be measured. In other words, if the radioactivity reading is low this indicates a relatively greater presence on the antibody of the chemical sought to be measured and hence its greater presence in the blood serum being tested. If the radioactivity reading is high a lesser presence of the chemical being measured is indicated.

A determination of the quantity of the chemical is then made by comparing the radioactivity readings obtained from the unknown quantity with the readings obtained as a result of the same procedure done on a known quantity of the chemical sought to be measured. The known quantity is contained in the "standard" component of the kit.

This description reveals that there are at least two other components of these kits which are as important as the radioactive material; i.e., the antibody, without which the test would have no specificity,

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(Continued from previous page.)
The presence of impurities which occur naturally or as an incident to production does not in itself affect the classification of a product as a compound.

(b) The term "compounds," as used in this schedule, includes a solution of a single compound in water, and, in determining the amount of duty on any such compound subject to duty in this schedule at a specific rate, an allowance in weight or volume, as the case may be, shall be made for the water in excess of any water of crystallization which may have been in the compound.

and the standard, without which the test result would be a meaningless reading of radioactivity. It would be impossible to ignore the essential contribution of these other components to the function of the kit by allowing the radioactive material alone to control the classification.

The cases cited by plaintiff are all distinguishable. In *Donalds Ltd., Inc.* v. *United States*, 32 Cust. Ct. 310, C.D. 1619 (1954), an inhaler, consisting of three parts, a holder, a cotton core, and a volatile liquid inhalant, was found to be an entirety, classifiable as a medicinal preparation, as against the Government's separate tariff treatment of the holder and its contents. The distinguishing feature of that case was the finding that the term "medicinal preparation" described the entire importation as a description of the use of the entirety. The tariff description claimed here is a description by physical form and characteristics which are not displayed by the entirety and therefore do not describe the entirety. The same distinction holds true for the classification of a fishing reel with two interchangeable spools as a fishing reel in *United States* v. *Charles Garcia & Co., Inc.*, 48 CCPA 140, C.A.D. 780 (1961).

Those cases [3] which deal with the question of whether minute ingredients should play a role in the classification of mixtures do not support plaintiff's position. In certain circumstances the quantity and function of minute ingredients may justify excluding them from consideration. Here, however, those components which plaintiff would exclude from consideration are in no sense minute. In fact, in their cumulative importance, in terms of function and quantity, they equal if not exceed the radioactive material emphasized by plaintiff.

In light of the above, judgment shall be entered for the defendant. In those instances in which the entries were classified under a provision other than item 799.00 the judgment is entered without affirmance of the classifications.

(C.D. 4799)

PISTORINO & COMPANY, INC. *v.* UNITED STATES

Shrines

Bronze carvings, called "pinnacles," assembled after importation from Italy to form a crown which was affixed as the top of a tower in the Madonna Queen National Shrine, below which stood a statue of Mary, the Mother of Christ, known as Madonna, Queen of the Universe, were held to be appurtenances or adjuncts of a shrine,

[3] *United States* v. *Accto Chemical Co., Inc.*, 64 CCPA 78, C.A.D. 1186, 553 F. 2d 685 (1977); *United States* v. *Cavalier Shipping Co., Inc.*, 60 CCPA 152, C.A.D. 1103 (1973).

under item 850.70 of the tariff schedules, and not "[a]rticles of copper, not coated or plated with precious metal," as classified, under item 657.35 of the schedules. From an examination of the previous location of the statue, as well as its present site, the testimony and exhibits of record, the statue known as Madonna, Queen of the Universe, at the Madonna Queen National Shrine in East Boston, is a shrine within the meaning of the tariff laws. As appurtenances or adjuncts of a shrine, the pinnacles are entitled to duty-free entry.

SHRINES—DEFINITION

The Madonna, Queen of the Universe statue was not an ordinary statue, but unique among statues. It was the object of special veneration and, therefore, constituted a shrine as defined by the pertinent cases. See *Acme Marble & Granite Company* v. *United States*, 324 F. Supp. 503, 66 Cust. Ct. 172 (1971). In the tariff sense, it is the essence of a shrine that the article, in and of itself, inspire and be the cause of the devotion paid to it. Its classification is not necessarily dependent on its location in relation to a building, nor on its size.

SHRINES—LIMITATIONS

Item 850.70 of the tariff schedules makes no reference to size or location of the articles enumerated. It does not specify or limit the number or kind of shrines, altars, pulpits, communion tables, baptismal fonts, mosaics, or iconostases which are entitled to duty-free entry. As an eo nomine provision, the term "shrines" includes all forms of shrines in the absence of any contrary legislative intent. *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, 470, T.D. 47464 (1935); *C. Wildermann Co.* v. *United States*, 56 Treas. Dec. 572, T.D. 43713 (1929).

SHRINES—APPURTENANCES OR ADJUNCTS

Item 850.70 of the schedules also permits duty-free entry to parts, appurtenances, or adjuncts of the articles enumerated, "whether to be physically joined thereto or not." On the particular facts presented, the pinnacles, in the form of a crown, though not physically joined to the Madonna, Queen of the Universe statue, belong, pertain, and relate specifically to that statue. As appurtenances or adjuncts to the statue, which is a shrine within the tariff laws of the United States, the pinnacles are appurtenances or adjuncts to a shrine.

Court No. 73-9-02584

Port of Boston

[Judgment for plaintiff.]

(Decided April 20, 1979)

Doherty and Melahn (*Walter E. Doherty, Jr.*, of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Mark K. Neville, Jr.*, trial attorney), for the defendant.

RE, Chief Judge: The legal question presented in this case pertains to the proper classification, for Customs duty purposes, of certain

bronze carvings imported from Italy. These carvings, called "pinnacles," were approximately 5 to 12 feet in length, and after importation were assembled to form a crown approximately 28 feet wide and 120 feet around. The crown was then placed or affixed as the top of a tower in a building complex in East Boston, Mass., known as the Madonna Queen National Shrine. On one facade of the tower, and below the crown, is a statue of Mary, the Mother of Christ, referred to as the Madonna, Queen of the Universe.

The bronze pinnacles were classified by the customs officials under item 657.35 of the Tariff Schedules of the United States [TSUS], as modified by T.D. 68–9, as "[a]rticles of copper, not coated or plated with precious metal: * * * Other." Consequently, they were assessed with duty at 0.6 cent per pound plus 7.5 per centum ad valorem.

Plaintiff protests that classification, and claims that the importation is properly classifiable under item 850.70 of the tariff schedules which covers "shrines" and "parts, appurtenances, or adjuncts" of shrines. If the imported pinnacles are properly classifiable under the claimed provision, they are entitled to be admitted free of duty.

The pertinent items of the tariff schedules provide as follows:

As classified:

	"Articles of copper, not coated or plated with precious metal:	
*	* * * * * * *	
657.35	Other	0.6¢ per lb. + 7.5% ad val."

As claimed:

	"Articles imported for the use of an institution organized and operated for religious purposes, including cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by such institutions:	
850.70	Altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, iconostases, or parts, appurtenances, or adjuncts of any of the foregoing, whether to be physically joined thereto or not, and statuary * * *	Free"

Under item 850.70 of the tariff schedules, "parts, appurtenances, or adjuncts" of a shrine need not be "physically joined thereto." Plaintiff does not allege that the importation is a part. It does, however, contend that it is an appurtenance or adjunct of a shrine.

Since the imported merchandise is used by a nonprofit religious institution within the intendment of item 850.70, it is plaintiff's con-

tention that it should be classified under item 850.70, and therefore enter duty free.

On the question of plaintiff's status the parties have stipulated that the importer, the Sons of Divine Providence, Inc., of Massachusetts, is an institution organized and operated for religious purposes, and that the Don Orione Rest Home is a nursing home staffed, operated, and controlled by this institution. The priests who are members of this religious order are known as the Don Orione Fathers. Although the defendant would not stipulate that the importer is a nonprofit organization, it offered no evidence to refute the testimony of Father Rocco Crescenzi, administrator of the home since 1952, that it is a nonprofit organization operated solely for religious and charitable purposes.

From the uncontradicted and reliable testimony of record, it is the determination of the court that the Sons of Divine Providence, Inc., of Massachusetts, qualifies as an institution entitled to duty-free entry under item 850.70 of the tariff schedules for the articles of merchandise enumerated in that provision.

The record and numerous exhibits submitted at the trial attest to the unique nature and character of the statue, the Madonna, Queen of the Universe. Plaintiff's contention that the statue is a shrine, or, in the alternative, that the building complex is a shrine, is best understood in relation to their history.

It is agreed that the statue of the Madonna is the focal point of the Madonna Queen National Shrine. Architectural plans for the building complex reveal that the Madonna Queen National Shrine, when fully completed, will consist of a tower, a plaza at street level, an underground church, and a subbasement chapel. The tower contains a total of six floor levels, three of which contain chapels dedicated to one of the three mysteries of the rosary. The top level of the tower contains a hall which also serves as an observation area. It is this hall-observation area which has, surrounding its roof, the pinnacles which were constructed to form the crown above the statue located below.

The statue, the Madonna, Queen of the Universe, is 35 feet high. It was moved to its present location on the north outer wall of the tower shortly before October 7, 1977, after the trial of this action. Prior to its removal the Madonna statue had been located, since 1954, directly across the street, and in front of the Don Orione Rest Home. The testimony of Father Crescenzi indicated that during all of this time votive candles had been lit before it, both day and night. Weather permitting, religious services and devotions were conducted at the statue daily, and more often on Sundays. Father Crescenzi's

testimony not only attests to the fervent devotion of the faithful for the Madonna statue, but also that the devotion was a constant and continuing practice.

In its present position at the north facade of the tower, the Madonna statue is 176 feet above the ground. It faces a plaza known as "Pilgrims' Square," which has been described as an area most appropriate for outdoor religious services and ceremonies. This area, in front of the north wall, consists of a platform with an altar at the base. The Madonna statue is above and behind the altar. The crown, consisting of the imported bronze pinnacles, surmounts the tower directly above the Madonna. About 5 to 10 feet separate the head of the Madonna and the crown.

Beneath the plaza will be a large church for which a retaining wall has already been erected. This church will extend below both the tower and the plaza. When completed, it will be used for public religious services and devotions, and will be named the Madonna Queen Church.

During the trial, at plaintiff's request, and in the presence of counsel for the parties and their witnesses, the court viewed the statue in front of the Don Orione Rest Home prior to its transfer to the tower wall across the street. A photograph of the statue, with a large quantity of votive candles at its base, situated in front of the Don Orione Rest Home site, is reproduced as appendix "A."

From this examination of the site, the testimony, and the exhibits produced at trial, there is no doubt that the statue displayed before the Don Orione Rest Home was the object of special veneration. The special nature of the devotions conducted there had meaning only because of the existence of the statue of the Madonna, Queen of the Universe. That these devotions took place solely because of the presence of the statue is obvious because there was no parish or church which drew the faithful to that site, regularly and in large numbers. It was clearly the statue which not only inspired the devotions conducted there, but also was the object of the homage rendered by the votive candles and the prayers of the viewers.

The overwhelming and uncontradicted evidence reveals clearly that the statue conforms to the definition of the term "shrine," as used in the tariff laws of the United States. *Acme Marble & Granite Company* v. *United States*, 324 F. Supp. 503, 66 Cust. Ct. 172 (1971). In the *Acme* case, the question presented was whether a 10-foot high Carrara marble bas-relief plaque depicting the resurrection of Christ, and installed on the outside front wall of a mausoleum, was a "shrine" under paragraph 1774 of the Tariff Act of 1930, as amended, or marble wholly or partly manufactured as classified. The court held that the bas-relief was not a shrine for tariff purposes since it was not the object

of special veneration. After an exhaustive review of the pertinent cases on the subject of shrines, the court stated:

> The record is clear that, apart from any funeral or commitment service held at the mausoleum in St. Mary Magdalen Cemetery, the plaque was neither the scene nor the object of any religious ceremony. * * *
>
> * * * Rather than the object of devotion for its own sake * * * the plaque was merely an aid in the solemnity or veneration inspired by the funeral or memorial mass. 324 F. Supp. at 510.

From a reexamination of those cases and the record here, the court concludes that the statue of the Madonna, Queen of the Universe, in its prior location at the Don Orione Rest Home, was a shrine for tariff purposes.

The uncontroverted statements of the witnesses and the exhibits show clearly that the statue was revered as a special object of veneration for more than 20 years. Since its arrival from Milan, Italy, in May 1954, a Marian year of the Roman Catholic Church, worshipers always burned candles and placed flowers before the Madonna statue. Together with daily pious devotions, this homage was uninterrupted, and a matter of common knowledge.

The statue of the Madonna did not merely inspire devotion, but was the very object of the devotion displayed before it. This is evident because there was no reason to light candles or conduct religious services and devotions outside the Don Orione Rest Home except for the existence or presence of the statue. The faithful came for no reason other than to view it, and pay special homage. It was not necessary that a mass, the highest form of worship in the Catholic liturgy, be conducted in order to inspire persons to pray before the statue. Indeed, on many occasions throngs joined in Marian processions honoring the Madonna Queen. In short, the Madonna statue had an individuality of its own, and was an object of special veneration and devotion.

Illustrative of this veneration is the "Annual Children's Sunday" at which occasion the children are placed at the feet of the Madonna, under whose patronage they receive a special blessing. A ceremony called "Blessing of the Sick" is also held annually before the Madonna who, it is believed by those present, "grants many spiritual graces to those who call on her for aid." As indicated by plaintiff's collective exhibit 7, worshipers have sent letters of thanksgiving and offerings "to the Madonna Queen" for favors received. The record compels the conclusion that the Madonna statue is a shrine in the tariff meaning of the term.

Plaintiff's claim, however, does not pertain to the classification of the Madonna statue, but rather to the pinnacles, which form its crown.

Plaintiff contends that the crown constitutes an appurtenance or adjunct of a shrine. Although the court deems the statue to be a shrine, as it stood outside the Don Orione Rest Home, the crown did not come into being until after the statue was removed to the tower wall across the street from the home. The crown, therefore, could not be considered an appurtenance or adjunct of the Madonna shrine while the statue remained at the home. It could only be and appurtenance or adjunct of the statue at the present location at the tower wall. Hence, further testimony was submitted at a continuance of the trial to assure that the statue would, in fact, be placed at the tower wall under the crown which already had been constructed. The court has duly noted the stipulation filed by the parties that the Madonna statue, in confirmation of that testimony, was enshrined during ceremonies in October 1977 at the tower wall of the building called the Madonna Queen National Shrine.

For the court to conclude, as plaintiff urges, that the crown is an appurtenance or adjunct of a shrine, it is necessary that the statue also be a shrine in its new setting or location. The testimony reveals that the Madonna statue required no particular setting for the homage it received. Thus, it would obviously require none in its new location, be it the building complex, the tower wall, or any other place at the Madonna Queen National Shrine. Its special relationship with the Don Orione Fathers for many years, however, explains its former and present settings. Nonetheless, as a shrine, with an individuality of its own, it requires no particular setting to be the object of devotion and veneration. The overwhelming history of devotion to the Madonna statue leads this court to conclude that the statue, on the former and present sites, constitutes a shrine within the tariff laws of the United States.

Plaintiff's collective exhibit 7 reveals that devotion and veneration to shrines in honor of the Blessed Mother is not new in America. It is evident that "a loyal and loving devotion to our Lady has been, from the very beginning, an important part of American Catholicism." It is also evident from the exhibits submitted at trial that the new setting, admittedly more dignified and attractive, may become one of the great Marian shrines in this country, manifesting the special place that has been accorded the Madonna statue. Indeed, the parties agree that it is the focal point of the Madonna Queen National Shrine, not only because it is prominently displayed, but because of its special relationship to the entire building complex which bears its name. It is apparent from the exhibits that a grandiose complex was contemplated for many years in which the Madonna would been throned on a pedestal befitting her portrayal as a Queen. Reproduced as appendix "B"

is a photograph of the pinnacles of the crown assembled together at the top of the tower, and, as appendix "C," a sketch of Pilgrims' Square with the Madonna statue enthroned in its tower.

At the Don Orione Rest Home, on a temporary basis, the Madonna statue rested on a wooden platform. However, it was always the intention to place the statue at the tower where a larger number of worshipers could continue the devotions. The move, therefore, was not only to fulfill the hopes and plans of those who conceived the Madonna Queen National Shrine, but also an expression of devotion to Mary, the mother of Christ.

The crown, formed by the pinnacles, according to the plans for the tower and the testimony, is an essential part of the design. Atop the historical hill of East Boston, the statue is intended to be an exact replica, except for the crown, of the Madonna which stands on Monte Mario, the tallest hill of Rome. That statue was erected through the efforts of "The Friends of Don Orione," in thanksgiving for the sparing of Rome from the physical ravages of battle during World War II. With its unique background, as recited in plaintiff's exhibit 7, and the special treatment it has received since its arrival in the United States, it cannot be questioned that the Madonna statue is not an ordinary religious statue, but is unique among statues. Even before its exportation from Milan, Italy, the statue was the object of a spontaneous display of devotion which delayed its arrival in this country.

Defendant indicates that since devotions have not been shown to take place before the Madonna statue at its new location, the crown could not be an appurtenance or adjunct of the statue-shrine. In view of the record, however, it is impossible to conclude that the statue's transfer to the loftier position of the tower has changed its character in any way. From the testimony, and the physical inspection of both the old and new locations, the only inference that can be drawn is that the Madonna statue has been, and continues to be, a special object of devotion and veneration. Indeed, the very purpose of its transfer to a specially designed place on the facade of the tower was to elevate and exalt the statue as the focal point of the Madonna Queen National Shrine. In this even more suitable setting it was also possible to provide the statue with a crown which it did not have before.

In the tariff sense, it is the essence of a shrine that the article, in and of itself, inspire and be the cause of the devotion paid to it. Its classification as a shrine is not necessarily dependent on its location in relation to a building. It is the holding of the court, therefore, that the Madonna, Queen of the Universe statue is a shrine at the tower wall of the Madonna Queen National Shrine.

The defendant, however, has challenged the requirement that an article, to constitute a shrine within the meaning of the tariff laws, need only inspire or incite the veneration paid to it. It claims that size and location are also crucial to its classification.

As in the *Acme* case, the classification question presented is whether the importation constitutes a shrine not from an "ecclesiastical point of view, or from the personal point of view of one or more laymen, but rather whether * * * [it] is a shrine within the meaning of the tariff laws." The *Acme* case made it clear that the meaning of ecclesiastical terms should be ascertained no differently than other terms whether religious or secular. Furthermore, it is well established in customs law that the common meaning of a term used in the tariff laws is a question of law to be determined by the court. See *Borneo Sumatra Trading Co., Inc.* v. *United States*, 311 F. Supp. 326, 329, 64 Cust. Ct. 185, 188 (1970).

In its search to ascertain congressional intent the court may rely not only upon expert testimony, but may also examine lexicographic and other standard authorities to aid in its formulation of a definition. The "New Catholic Encyclopedia" recognizes four types of shrines "according as they honor objects of our Lord's Passion, the Blessed Virgin Mary, the saints, or Catholic beliefs and devotions." It also states that "[t]he term shrine refers to a place, usually the object of pilgrimages, where a miraculous statue or picture or other holy object receives special veneration * * * ." "XIII New Catholic Encyclopedia," 181–82 (1967).

On the meaning of the term "shrine," the court heard the testimony of two members of the Roman Catholic clergy, one a witness for the plaintiff and one for the defendant. Father Rocco Crescenzi, the witness for the plaintiff, was ordained in 1943, and has been associated with the Don Orione Rest Home since 1949. From 1964 to 1970 he served as provincial for the Don Orione Institutions, an assignment in which he supervised seven institutions, all of which were engaged in charitable works. His concept of a shrine is "more than a regular church. It is a place of devotion where people go more willingly for devotion."

Defendant's witness, Rev. Theodore M. Steeman, is an associate professor in the theology department of Boston College. He testified that a shrine may be understood in two senses. In its narrow sense, which he stated governs its true meaning, a shrine is "a smaller object, a kind of container or box that is used to conserve or exhibit relics and other religious objects for religious purposes." He defined shrines in the broader sense as consisting of "churches or even larger religious establishments that have a particular devotional purpose

usually not linked to a parish, but that are justified, basically, in terms of the specificity of the devotion that is acted out in those places."

Reverend Steeman conceded that the Madonna Queen National Shrine, upon completion, would be a shrine in the broad sense of that term if devotions were shown to take place there. Nevertheless, he stated that the distinction between the broad and narrow concepts of the term "shrine" was important because, in his opinion, the tariff laws had adopted the narrow concept since the articles listed in item 850.70 of the tariff schedules are small and movable.

The defendant contends that there are three definitions of the term "shrine," at least two of which are possible within the meaning of item 850.70 TSUS. Relying on lexicographic authority, the testimony of Reverend Steeman, and the doctrine of noscitur a sociis, the defendant favors an intermediate interpretation of the broad and narrow meanings. Thus, it suggests that a shrine is "an object that is considered sacred by a religious group and that serves as the focus of the performance of some ritual." In addition, defendant contends that the tariff laws require that it be a small object capable of placement within a building, since the term "shrines" is listed with small articles, i.e., altars, pulpits, baptismal fonts, all capable of placement within a building. For this interpretation, the defendant relies heavily on the doctrine of noscitur a sociis which teaches that one may ascertain the meaning of an ambiguous term by the meaning of the other terms with which it is associated. See *Nomura (America) Corp.* v. *United States*, 62 Cust. Ct. 524, 299 F. Supp. 535 (1969), *aff'd*, 58 CCPA 82, 435 F. 2d 1319 (1971).

The defendant also cites legislative history to support its contention that any article which cannot be placed within a building is ineligible for classification as a shrine. It maintains that since the House Committee on Ways and Means, as well as the Senate Finance Committee, used the word "article" throughout their reports, Congress could not have intended it to include a building complex or a locus within the provisions of item 850.70. Suffice it to say that the term "article," in the tariff schedule sense, simply means "importation" or "merchandise," and in no way resolves the classification question presented.

By including "shrines" in item 850.70 Congress sought to accord shrines the same duty-free treatment given altars, pulpits, communion tables, baptismal fonts, mosaics, and iconostases. It did not, in any way, specify or limit the number or kind of shrines just as it did not qualify altars, pulpits, communion tables, baptismal fonts, mosaics, or iconostases. As stated in *Nootka Packing Co. et al.* v. *United States*, 22

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CCPA 464, 470, T.D. 47464 (1935): "an eo nomine statutory designation of an article, without limitations or a shown contrary legislative intent, judicial decision, or administrative practice to the contrary, and without proof of commercial designation, will include all forms of said article." It should also be noted that because "statuary" is included in item 850.70 does not mean that statues are excluded from the category of shrines. Clearly, not all statues are shrines, and many shrines are not statues.

What must be determined is whether the pinnacles, which constitute the crown of the Madonna statue, are "appurtenances or adjuncts" of a shrine. The common element for the classification of the articles enumerated in item 850.70 is that they are imported for the use of a religious institution. The statutory provision makes no reference to size or location. As for size, altars, pulpits, and baptismal fonts are almost always large items, while mosaics, iconostases, and statuary may vary in size, as well as in location. Moreover, altars, pulpits and baptismal fonts are not necessarily movable, and, once in place, are usually fixed.

The term "shrines, "therefore, in item 850.70, cannot be limited as to size, location, or even portability. The articles enumerated all share the common element of a religious or spiritual meaning. The court, therefore, does not agree with defendant's contention that an article, to fall within the ambit of item 850.70 of the tariff schedules, need necessarily be "small," or be located in any particular place.

A study of the cases examined in *Acme* indicates that neither size nor location was determinative in deciding whether the imported article was a shrine for tariff purposes. The case of *Patrick J. Temple* v. *United States*, 65 Treas. Dec. 1249, Abs. 26784 (1934), decided under paragraph 1774 of the Tariff Act of 1930, held that plaster-of-paris images of several saints, and a statue of the "Pietà," placed in the basement of a Catholic mission, were shrines because they inspired veneration, and were the objects of "special devotional services." In *C. Wildermann Co.* v. *United States*, 56 Treas. Dec. 572, T.D. 43713 (1929), Stations of the Cross were also held to be shrines under paragraph 1674 of the Tariff Act of 1922, although they were outdoors, and not physically present in a religious edifice.

A leading case is *Daprato Statuary Co.* v. *United States*, 16 Ct. Cust. Appls. 233, T.D. 42840 (1928), which dealt with paragraph 1674 of the Tariff Act of 1922, the predecessor provision to paragraph 1774 of the Tariff Act of 1930. The Court of Customs Appeals affirmed a holding of this court which held that a marble, mosaic floor of a church, upon which rested an altar and two shrines, was not part of an altar or "shrine." It defined the term "shrine" as signifying "either

a chapel dedicated to some holy personage or a thing, receptacle, case, tomb, or altar made venerable by some historic event or sacred association." It also noted that "[a]ltars and shrines * * * have an individuality of their own * * *." 16 Ct. Cust. Appls. at 235.

Although the defendant concedes that the courts have broadened the definition of shrine since the *Daprato* case, it nevertheless cites that case for the proposition that Congress intended the terms "shrine" and "altar" to be used in a restricted and religious sense, and that it did not intend to exempt from duty churches, chapels or buildings dedicated to religious uses. The defendant also questions the extent to which Congress has ratified later decisions in which the courts have broadened the definition of shrines.

The present governing tariff provision is item 850.70 of the tariff schedules. The predecessor provision covering shrines, and parts of shrines, paragraph 1774 of the Tariff Act of 1930, was the subject of comment by the Court of Customs and Patent Appeals in *United States* v. *Greek Orthodox Church of Evangelismos*, 49 CCPA 35, C.A.D. 792 (1962). In that case, the appellate court affirmed this court's decision which held that an iconostasis, containing several panels of icons (holy pictures), was a shrine since the pictures were regarded as sacred and venerated. The following portion of the opinion of the Court of Customs and Patent Appeals is pertinent:

> Turning to the legislative history, the term in question appeared in the Tariff Act of 1922, paragraph 1674, and, at a time when that act was in force, in *C. Wildermann Co.* v. *United States*, 56 Treas. Dec. 572, T.D. 43713, the Customs Court said: "It appears that although a shrine was originally a tomb containing the bones of saints or other sacred person, the meaning of the word has, through the ages, been recognized by the lexicographers to have enlarged in scope so as to embrace a receptacle containing an object of religious veneration, such as a *niche for sacred images*." [Italic supplied.] This decision was presumably known to Congress when it reenacted, as paragraph 1774 of the Act of 1930, the same language which had been construed by the Customs Court. The authorities are not entirely uniform upon the point, but this court has held that, although the reenactment of the statute after a judicial interpretation by a court which is not a court of last resort "may not be a controlling consideration, it is a matter we think proper to consider along with" other matters. *Oxford University Press, N.Y., Inc.* v. *United States*, 33 CCPA 11, 22, C.A.D. 309.
>
> Since the passage of the 1930 act, the Customs Court in a consistent series of decisions has construed the words "shrine or parts of shrines" broadly enough to cover the present case. * * * Even if there were no evidence afforded by the legislative history, we would hesitate to overrule a line of cases that has extended over 30 years though not the decisions of a court of last resort. 49 CCPA at 39.

The cases referred to by the Court of Customs and Patent Appeals in the *Greek Orthodox Church* case were reviewed by this court in the *Acme* case. The defendant, however, has neither discussed nor cited the *Acme* case which contains the more recent treatment by this court on the subject of shrines.

The cases relied upon by this court in *Acme* reveal that the courts have interpreted the term "shrine" liberally, following the policy articulated by the Supreme Court in *Benziger* v. *United States*, 192 U.S. 38 (1904), as to articles imported solely for religious purposes. In *Benziger*, the question presented was whether the omission from paragraph 638 of the Tariff Act of 1897 of the words "casts of marble, bronze, alabaster, or plaster of paris," which appeared in prior tariff acts, prevented the free entry of such casts as "casts of sculpture" under paragraph 649 of the 1897 act. After examining the various provisions in the tariff statutes from 1861 to 1897, as they pertained to casts of sculpture, the Supreme Court said:

> This provision of the statute should be liberally construed in favor of the importer, and if there were any fair doubt as to the true construction of the provision in question the courts should resolve the doubt in his favor. 192 U.S. at 55.

No opinion since *Acme* has been cited by the defendent in which this court, or the Court of Customs and Patent Appeals, has departed from the broadened interpretation given to the term "shrine." Thus, what was said by the Court of Customs and Patent Appeals in *United States* v. *Greek Orthodox Church of Evangelismos* as to the 1930 provision for shrines is equally true today as to item 850.70 of the tariff schedules.

It should be noted that in the cases reviewed in *Acme*, in which the articles were held not to be shrines or parts of shrines, the court was not concerned with whether they were located inside or outside a building, but rather, whether they were special objects of veneration. Indeed, the holding in *Acme*, that the marble bas-relief plaque installed in the outside wall of a mausoleum was not a shrine, was not based on the fact that the plaque was large and located outdoors. It was held not to be a shrine because it was not the object of special veneration. See also *Daprato Statuary Co.* v. *United States*, 16 Ct. Cust. Appls. 233, T.D. 42840 (1928) [mosaic floor of a church held not part of a shrine]; *Columbo Co.* v. *United States*, 71 Treas. Dec. 186, T.D. 48794 (1937) [mosaic of colored glass held not a shrine]; *Lea's* v. *United States*, 41 Cust. Ct. 4, C.D. 2012 (1958) [majolica tiles held not parts of shrines]; *Westfeldt Brothers* v. *United States*, 48 Cust. Ct. 125, C.D. 2323 (1962) [stained-glass windows held not shrines]; *John Horvath Company* v. *United States*, 274 F. Supp. 986, 59 Cust. Ct. 397 (1967) [mysteries of the rosary plaques held not shrines].

The *Wildermann* case, 56 Treas. Dec. 572, T.D. 43713 (1929), an early case in which outdoor Stations of the Cross were held to be shrines, is still pertinent, and refutes the defendant's contention that a shrine must be located indoors:

> Congress in providing eo nomine for shrines in paragraph 1674 * * * [succeeded by paragraph 1774 of the Tariff Act of 1930 and item 850.70 of the tariff schedules] did not provide either expressly or by implication where such articles should be used, and under the rules of construction in cases of this kind all forms of the article mentioned in the paragraph of the law are included therein * * *. 56 Treas. Dec. at 575.

The defendant cannot restrict the fundamental principle of Customs law governing the interpretation of an eo nomine provision referred to in the quotation from *Wildermann*, namely, that "in cases of this kind all forms of the article mentioned in the paragraph of the law are included therein."

Notwithstanding the testimony on the various meanings of the term "shrine," the determination of what constitutes a shrine for tariff purposes is a question for the court to decide. Some of the testimony of the defendant's witness is clearly contradictory of existing law. On the legal meaning of the term "shrine," it is unduly restrictive, and is of value only as to the etymological definition of the term. Indeed, under the restrictive meaning suggested by defendant, some of the articles or importations already held to be shrines by the courts would not qualify for duty-free entry pursuant to the tariff laws.

It is the determination of the court that the statue of the Madonna, Queen of the Universe, at the tower wall of the Madonna Queen National Shrine is a shrine for tariff purposes. The Madonna statue, as an outdoor statue-shrine, is no different than the outdoor Stations of the Cross shrine in the *Wildermann* case, and the Pietà statue in the *Temple* case. All share in common the essential element that they are special objects of veneration.

Although the transfer of the Madonna, Queen of the Universe statue did not change its character as a shrine, its removal to the tower is important on the question whether the pinnacles, placed over its head as a crown, are "appurtenances or adjuncts" of a shrine.

Item 850.70 of the tariff schedules expressly includes:

> * * * shrines * * * or parts, appurtenances, or adjuncts of any of the foregoing, whether to be physically joined thereto or not * * *.

Item 850.70 reflects an amendment made in 1962 to its predecessor provision, paragraph 1774 of the Tariff Act of 1930, by H.R. 4449,

Public Law 87–604. Senate Report No. 1719, which accompanied H.R. 4449, makes the following explanation:

> The word "parts" contained in the present provisions of paragraph 1774 has been interpreted by the courts to refer to structural parts to be physically joined to the articles of which they are a part. Difficult interpretative questions have arisen in respect to present provisions in this respect. It is, of course, the intent of the Finance Committee in reporting this bill that general construction materials are not to be included, as the bill applies only to structural parts essential to the article in question.
>
> A second purpose of the bill is to provide that articles which are appurtenances or adjuncts of the named articles, as well as parts thereof, shall be accorded the free entry privilege *whether to be joined thereto or not*, when imported under the conditions specified. Thus, articles concerning which interpretative questions have arisen, such as baldachinos, reredoses, tabernacles, altar predellas, altar cloths, and altar candlesticks, which are not actually physically attached to, or are structural parts of altars, pulpits, communion tables, and other religious articles named in paragraph 1774, would be within the purview of the bill. Candles and similar items not specially prepared for use with altars, shrines, etc., and which find other uses, would not be included. [Italic added.]

It is clear from the statutory language that the articles, to qualify for the free-entry privilege, may be either parts, appurtenances, or adjuncts of shrines. Hence, articles are embraced in tariff item 850.70 which includes shrines if they are "appurtenances or adjuncts" of shrines whether or not they are "parts." While plaintiff does not maintain that the pinnacles are parts of a shrine, it does contend that they are appurtenances or adjuncts of a shrine, namely, the Madonna, Queen of the Universe statue.

The following are the definitions of the terms "appurtenance," "appurtenances," "appurtenant," and "adjunct":

> Appurtenance: "That which belongs to something else; an adjunct; an appendage; * * *." "Black's Law Dictionary" 133 (revised fourth ed. 1968)
>
> Appurtenances: "Accessory objects used in any function * * *." "Webster's Third New International Dictionary" (1968)
>
> Appurtenant: "Belonging, appropriate, accessory * * *." "Webster's Third New International Dictionary" (1968)
>
> Adjunct: "Something joined or added to another thing but not essentially a part of it * * *." "Webster's Third New International Dictionary" (1968)

Thus, the terms "appurtenance" and "adjunct" appear to be synonymous, and describe articles which belong, pertain, or relate to another article.

While the imported pinnacles, in the form of a crown, are not joined physically to the Madonna, Queen of the Universe statue, there is an

unquestioned belonging, pertinence, or relationship between the statue and the crown. A crown is the traditional headdress of a queen, and is the mark of a sovereign. The testimony, exhibits, and inspection reveal a physical, artistic, and symbolic relationship between crown and statue.

The 5 to 10 feet between the head of the statue and the crown neither affect the concept, nor detract from the aesthetic appeal of the crown. Though not physically joined to the statue, it is physically joined to the tower which conceptually and functionally serves as a throne for the statue. Nevertheless, item 850.70 expressly provides that apurtenances or adjuncts, as well as parts, need not be physically joined to the articles enumerated. On the particular record before the court the bronze pinnacles, which constitute the crown, are appurtenances or adjuncts of the shrine, the Madonna, Queen of the Universe statue.

In its brief, the defendant has also contended that the imported merchandise cannot be classified under item 850.70 as a part, appurtenance, or adjunct since the statue and the imported merchandise were "not positioned in any arguable contact with one another for over 5½ years after the importation of the 'crown.' " Defendant relies upon general interpretative rule 10(e)(ii) which states that:

> A tariff classification controlled by the actual use to which an imported article is put in the United States is satisfied only if such use is intended at the time of importation, the article is so used, and proof thereof is furnished within 3 years after the date the article is entered.

Since item 850.70 is not "a tariff classification controlled by the actual use," defendant's contention is without merit. The articles imported, in order to qualify for duty-free status, must be "imported for the use of an institution organized and operated for religious purposes." That requirement, however, does not pertain to the actual use or purpose of the articles, but only as to the class or type of institution that may use the importation. Item 850.70 does not speak of use within the intendment of general interpretative rule 10(e)(ii), but simply enumerates certain articles. In the language of customs law, item 850.70 is an eo nomine provision, i.e., one which describes an article of merchandise by specific name, and is not a classification provision which depends on actual use. See, e.g., the *Wildermann* case, which stated categorically that Congress provided eo nomine for shrines. 56 Treas. Dec. at 575. The question is whether the pinnacles constitute "appurtenances or adjuncts" of any one of the articles named in that eo nomine provision.

On the particular facts presented, the imported merchandise, the bronze pinnacles which constitute the crown of the Madonna, Queen

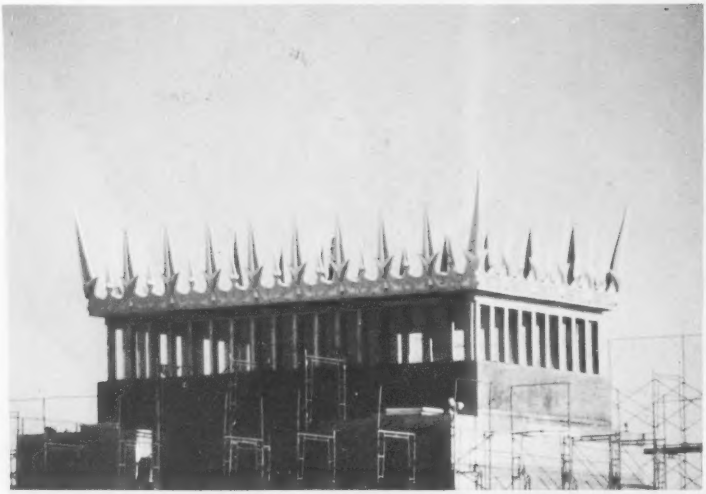
of the Universe statue, are appurtenances or adjuncts of a shrine, an article specifically enumerated in tariff item 850.70.

In view of the foregoing, it is the determination of the court that the imported bronze pinnacles are entitled to duty-free entry under item 850.70 of the Tariff Schedules of the United States.

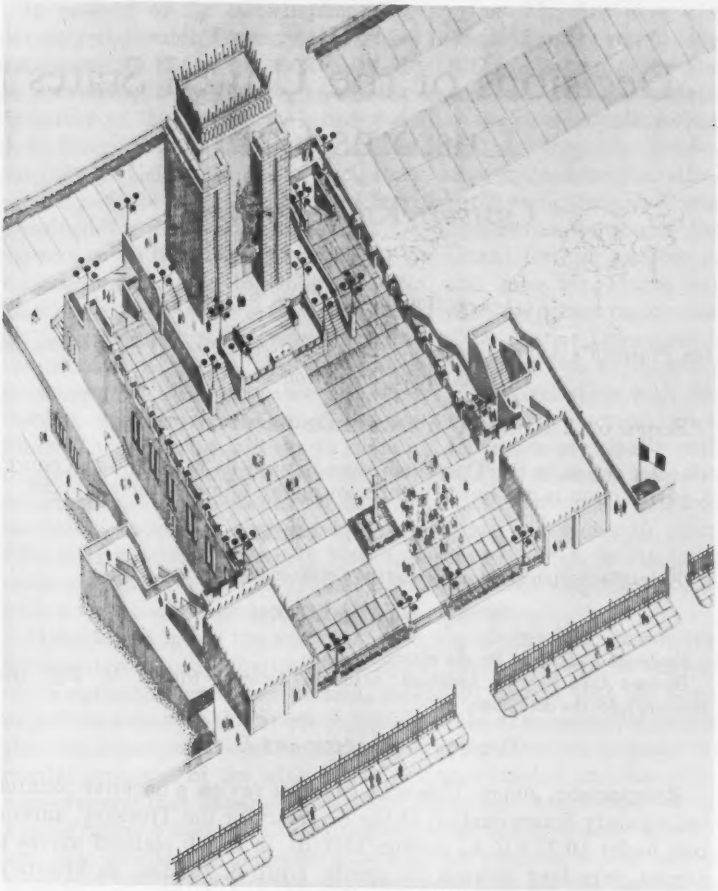
Judgement will issue accordingly.

APPENDIX "A"

APPENDIX "B"



APPENDIX "C"



Decisions of the United States Customs Court

Customs Rules Decisions

(C.R.D. 79–9)

AIRCO, INC. *v.* UNITED STATES

On Plaintiff's Motion for Deposition and Production of Documents and Cross-Motion for a Protective Order

SCOPE OF TRIAL IN COUNTERVAILING DUTY ACTIONS

An action in the Customs Court is tried de novo and the court's jurisdiction is not limited to reviewing an administrative record.

Court No. 76–3–00643

[Plaintiff's motion granted; defendant's cross-motion denied.]

[Dated April 16, 1979]

Frederick L. Ikenson for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Sheila N. Ziff*, trial attorney), for the defendant.

OPINION TO ACCOMPANY ORDER

RICHARDSON, Judge: This is an action to review a negative countervailing duty determination of the Secretary of the Treasury, authorized under 19 U.S.C.A., section 1516(d), in which plaintiff moves to depose defendant through its agents, Lynn J. Barden, an attorney-adviser in the Office of the General Counsel, U.S. Department of the Treasury, and R. Theodore Hume, an Assistant Chief Counsel, U.S. Customs Service (formerly an attorney-adviser in the Office of the General Counsel, U.S. Department of the Treasury), and to depose one Peter O. Suchman, formerly Deputy Assistant Secretary of the Treasury, and further, to require the deponents to bring with them all documents and tangible things in their possession or under their control, not previously furnished by defendant to plaintiff's counsel in this

action, relating to the countervailing duty case of *Ferrochrome from South Africa*.

In support of the motion plaintiff avers that Mr. Suchman was not only the senior Treasury Department official directly responsible for overseeing the administration of 19 U.S.C.A., section 1303—the countervailing duty statute, but in his capacity as Acting Assistant Secretary of the Treasury, issued the final negative countervailing duty determination the subject of this litigation, that Mr. Barden not only participated in an investigatory, advisory, and/or analytical capacity in the subject countervailing duty investigation, but was identified by defendant in plaintiff's interrogatories as one of the persons consulted (together with Mr. Suchman) for the purpose of making responses to the interrogatories, and that Mr. Hume was identified by defendant in said interrogatories as the person responsible for collecting, compiling, and furnishing to the Justice Department, the information which is the basis for defendant's answers to plaintiff's interrogatories, and who also participated, in consultation with Mr Barden, in the preparation of the answers to the interrogatories. Plaintiff asserts that it seeks to examine deponents principally with respect to the Treasury Department's reasons for issuing a negative determination in the countervailing duty case, certain memoranda written by deponents, and certain answers given in response to plaintiff's interrogatories, especially Nos. 1, 4, and 11, which, in the judgment of plaintiff's counsel, require clarification and amplification, all with a view toward discovering relevant evidence.

Defendant opposes the motion and, in the alternative, cross-moves for a protective order limiting the scope of the depositions. In support of its opposition and cross-motion, defendant asserts that the scope of judicial review in this action is limited to the administrative record, that the depositions sought constitute improper attempts to probe the mental processes of the administrative decisionmaker and his attorney-advisers, that Messrs. Barden and Hume are "employees" of the United States whom plaintiff improperly seeks to examine as "agents," and that should the depositions be allowed, plaintiff should not be permitted to: (1) Inquire into any matters which are not part of the administrative record; (2) inquire into advisory opinions, recommendations or reasons therefor; (3) inquire into deponents' mental or thought processes; (4) inquire of Messrs. Barden and Hume into matters concerning which they served as attorneys to defendant or which are otherwise outside the scope of their employment as "employees" of defendant; and (5) inquire into any matters other than deponents' personal knowledge of the circumstances of the making and maintenance of the administrative record.

In response to defendant's opposition and cross-motion, plaintiff maintains that the scope of judicial review of the Secretary's negative countervailing duty order is trial de novo, that even if the scope of judicial review herein is limited, the mental processes of the administrator may be probed if he has left no other record of the reasons for his decision—in order that the rationale behind the determination under review may be ascertained, that defendant erroneously assumes that the lawyer-client privilege attaches to all communications between lawyer and client, and that Messrs. Barden and Hume did act as agents for defendant when they functioned as such in responding to interrogatories directed to defendant.

The court is inclined to agree with plaintiff. As defendant's counsel points out in her memorandum (p. 5), the character of proceedings conducted by the Secretary of the Treasury under the countervailing duty statute is "investigatory." However, proceedings in a judicial tribunal such as the Customs Court are "adversarial" in nature.

The defendant asserts that it has "consistently and persistently vigorously espoused its position"* limiting the scope of judicial review of the Secretary of Treasury's determination as to the payment or bestowal of a bounty or grant "dehors" the administrative record in the various countervailing duty actions instituted in the Customs Court. It appears to this member of the court that the espousal is of recent vintage, following the Trade Act of 1974, which for the first time gave the Customs Court jurisdiction to review negative determinations of petitions for the imposition of countervailing duties. In fact, even when the Board of General Appraisers, the predecessor of the Customs Court, was structured within the Department of the Treasury, the appellate courts held that the board "is a judicial tribunal, clothed with judicial powers to determine the classification of imported goods and the duty which should be imposed thereon," *United States* v. *Kurtz, Stuböeck & Co.*, 5 Ct. Cust. Appls. 144, 146, T.D. 34192 (1914); that "[i]ts powers and functions are judicial, its process, forms, and practice are judicial, and its decisions and judgments have the force and conclusiveness of those of other courts," *United States* v. *Macy & Co., Inc.*, 13 Ct. Cust. Appls. 245, 249, T.D. 41199 (1925); and, significantly, that although affidavits of antiquity authorized under regulations issued by the Secretary of the Treasury were final in the first instance for the purposes of entry, upon protest before the board "the question of antiquity comes on for hearing de novo, like other cases," *United States* v. *Thomas*, 3 Ct. Cust. Appls. 142, 145, T.D. 32385 (1912).

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*See defendant's memorandum, p. 2, on motion to stay proceedings, denied Apr. 5, 1979.

And, consistent with these holdings, the Court of Customs and Patent Appeals has held with respect to cases arising in the Customs Court that "the Secretary of the Treasury is not authorized to prescribe the character of proof required in proving issues before the trial court," *United States* v. *C. J. Holt & Co., Inc.*, 17 CCPA 385, 387, T.D. 43822 (1930); and "[t]he Customs Court is a court of justice, and the same rules of evidence apply there as in courts of general jurisdiction," *W. T. Grant Company* v. *United States*, 38 CCPA 57, 61, C.A.D. 440 (1950).

Thus, it is clear that when operating under the same "mandatory" statute such as the countervailing duty statute, the "adversarial" character of the judicial proceeding under the statute emerges in sharp contrast to the "inquisitorial" character of the prior administrative proceeding under the statute and under which, in the words of defendant's counsel (memorandum, p. 5) "the 'interested parties' who do appear may present facts which the Secretary may find of interest and assistance to him, but have no right of cross-examination." Before the Customs Court in a section 1516(d) civil action, the United States represents but one of two parties in an "adversarial" proceeding. And, although the administrative record may be the measure of the Government's input into that "adversarial" proceeding, it can hardly have been intended by the Congress that such a record also be the measure of input into such proceeding on the part of the Government's adversary—consistent with the expressed congressional intent in this new legislation, the Trade Act of 1974, to place the American manufacturer on an equal footing with his counterpart, the American importer, insofar as judicial remedies are concerned, and of whose judicial remedies the Congress was undoubtedly aware. See *Energetic Worsted Corp.* v. *United States*, 53 CCPA 36, 42, C.A.D. 874 (1966), *reversing Energetic Worsted Corp.* v. *United States*, 51 Cust. Ct. 55, C.D. 2413 (1963), where, at the instance of an American importer and upon a "plenary trial record," the Court of Customs and Patent Appeals rejected a bounty-finding determination of the Secretary of the Treasury [whose determination was supported by a majority of judges on a Customs Court panel] upon a finding that the Secretary's determination was not supported by "substantial evidence."

Certainly, it can scarcely have been the intention of Congress to radicalize the traditional nature of judicial proceedings in the Customs Court solely on the occasion of expanding the remedies available to a segment of the American public in that court, without expression of a purpose to do so. And nothing but the most cogent expression of views in this direction, totally lacking in the legislative history of section 1516(d), would warrant such a conclusion.

Assuming, without admitting, as defendant contends, judicial review of the negative countervailing duty determination rendered by the Secretary of the Treasury, reported at 41 F.R. 1298 (1976), is limited to the administrative record, still, in order for judical review in this action to be meaningful, the court needs to know the reasons which prompted the Secretary to act in the manner he did. After reading the Secretary's final decision in the case the court is convinced that the terseness of its conclusory language leaves something more to be desired relative to the underlying basis for the determination.

Discovery is a useful tool with which to amplify an otherwise meager administrative record. Indeed, its employment by plaintiff prior to the instant motions has resulted in the identification of individuals whose activities in government service place them, in the court's judgment, in such high levels of policymaking endeavor in relation to the determination under review as to make them privy to relevant factual material, if it exists, and characterize them as "agents" (Messrs. Barden and Hume), and, therefore, amenable to additional discovery procedures in such capacity.

The proposed discovery does not, in the court's view, exceed permissible limits or warrant protective measures at this point. Defendant's fears in this regard are at best anticipatory and premature, and certainly not grounded in any factual basis. Even factual material contained in deliberative memoranda is discoverable if susceptible to severance from its context. See *A. O. Smith* v. *Federal Trade Commission*, 403 F. Supp. 1000, 1015 (1975). And should any improper question be propounded during the examinations, defendant's remedies are ample and accessible at such a time.

For the reasons stated, plaintiff's motion is granted and defendant's cross-motion is denied.

(C.R.D. 79–10)

MITSUBISHI INTERNATIONAL CORPORATION *v.* UNITED STATES

Memorandum Opinion in Explanation of the Dismissal of Court No. 77–7–01146 [81 Cust. Ct. —, C.D. 4771]

(Dated April 18, 1979)

Bogle & Gates (*David M. Salentine* and *Thomas J. McKey* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Sidney N. Weiss* and *Madeline B. Cohen*, trial attorneys), for the defendant.

WATSON, Judge: This is written to explain the dismissal of this action for lack of jurisdiction in *Mitsubishi International Corporation* v. *United States*, 81 Cust. Ct. —, C.D. 4771 (1978).

This action originated in a protest made against a notification by the district director at Anchorage, Alaska, that he was mitigating a previous demand for penalties to a lower amount. Defendant moved to dismiss the action on the ground that decisions relating to the imposition of a penalty are not within the subject matter jurisdiction of this court. The court denied the motion, holding that a decision to impose a penalty was a decision as to an exaction within the meaning of 19 U.S.C. 1514(a) (3), was protestable, and ultimately could be challenged in the Customs Court. *Mitsubishi International Corporation* v. *United States*, 81 Cust. Ct. —, C.R.D. 78–9, 454 F. Supp. 458 (1978).

Thereafter, upon defendant's motion for rehearing and reconsideration, the court dismissed the action. This was done without an opinion, the lack of which the court now views as a regrettable source of uncertainty as to the grounds for dismissal.

In this case the court considered the decision of the district director to exact a lower penalty as the final decision of the appropriate customs officer as to an exaction within the jurisdiction of the Secretary of the Treasury as described in 19 U.S.C. 1514(a). The final decision in such a matter is the decision which the importer does not seek to modify, or cannot modify, by means of petition procedures allowed under regulations issued by the Secretary of the Treasury. If, in fact, the decision follows a petition procedure instituted by the importer it is subject to protest, not for error in the mitigation or remission process, but rather for error in the exaction of a penalty in terms of 19 U.S.C. 1592.

Here, the protest was made following a decision to lower the penalty. Originally, the court thought that the district director's refusal to treat the protest as a protest and his characterization of it, in his letter of January 17, 1977, as a "supplemental petition" for review* constituted a rejection or denial of the protest. But upon reconsideration it became clear that, semantics aside, the plaintiff's objections did subsequently receive administrative review. Accordingly, although the district director could not transform the importer's protest into a petition by administrative fiat he did not deny the protest by electing to consider its contents under another name. It follows that the protest was ultimately denied on June 22, 1978, when the "supplemental petition" was denied.

Since plaintiff brought this action prior to the actual denial of its administrative protest, the action was prematurely commenced in this court. See, 28 U.S.C. 1582(c) and 28 U.S.C. 2631(a). For the above reasons the action was dismissed.

*Pursuant to 19 CFR 171.33.

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Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 23, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/63	Landis, J. April 20, 1979	C. H. Powell Company	73-11-03129	Item 332.40 15% or 16%	Item 355.65 8.5% or 9%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/64	Watson, J. April 20, 1979	C&H Company et al.	76-3-00884 etc.	Item 389.60 25¢ per lb. +15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Seattle Backpacking tents

P79/65	Boe, J, April 20, 1979	Clairol, Inc.	76-6-01387	Items 544.51/807.00 17.5% upon full value of merchandise less cost or value of prefabricated U.S. manufactured components	Items 688.40/807.00 5.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in models [C]LM2 and [C]LM3 which were found applicable upon liquidation of merchandise; and upon full value of imported merchandise less cost or value ($2.-02357) of prefabricated U.S. manufactured components contained in model LM4 imported in 1972 which were found applicable upon liquida-	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (models [C]LM2, [C]LM3, and LM4)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
					tion of merchandise. Value of LM4 upon liquidation was found to be $11.61 including cost or value of $2.02357		
P79/67	Boe, J. April 20, 1979	Export Import Services, Inc., for the account of Clairol, Inc.	77-9-03887	Items 544.51/ 807.00 20.5% upon full value of merchandise less cost or value of prefabricated U.S. manufactured components Item 544.51 20.5% upon full value of merchandise	Items 688.40/ 807.00 6.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in model [C] LM2 which were found applicable upon liquidation of merchandise; and upon full value of im-	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (models [C]LM2 and [C]LM3)

					ported merchandise less cost or value ($1.38605 each) of prefabricated U.S. manufactured components contained in model [C]LM3 imported in 1971		
P79/66	Boe, J. April 20, 1979	Export Import Services, Inc., for the account of Clairol, Inc., et al.	75-1-00332, etc.	Items 544.51/807.00 20.5% or 17.5% upon full value of merchandise less cost or value of prefabricated U.S. manufactured components Item 544.51 20.5% or 17.5% upon full value of merchandise	Items 688.40/807.00 6.5% or 5.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in models [C]LM2, [C]LM3 (except entries K253614 and K253617 of 75-1-00332; 75-8-02076; and 75-8-01918) and LM5 which were found	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (models LM1, [C]LM2, [C]LM3, LM4 and LM5)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
					applicable upon liquidation of merchandise; and upon full value of imported merchandise less cost or value ($1.45224 and $2.02357 each, respectively) prefabricated U.S. manufactured components contained in models LM1 and [C]LM3 (included in entries K253614 and K253617 of 75-1-00332; 75-8-02076; and 75-8-01918) imported in 1972		

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/59	Watson, J. April 20, 1979	Sandoz, Inc.	74-4-00858	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7%, 28.9% and 31.1% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place if delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

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U.S. Customs Service

Customs Court

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